97th Congress
2d Session

COMMITTEE PRINT

WORKSHOP ON LAND PROTECTION AND MANAGEMENT

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UNITED STATES SENATE

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MEMORANDUM OF THE SUBCOMMITTEE CHAIRMAN

To Members of the Senate Committee on Energy and Natural Resources:

During the past year, our Nation has become more aware of the importance of our land and natural resource heritage to our spiritual and economic well-being. There have been spirited, healthy public discussions of a number of issues related to these resources. Not the least of these discussions took place in and about the second land workshop held by the Subcommittee on Public Lands and Reserved Water, on June 14 and 15, 1982.

The first workshop, in 1981, dealt with public land acquisition and alternatives. Those workshop proceedings were published as a committee print last year and have since enjoyed extensive favorable comment from a broad range of interest groups.

The 1982 workshop, on land protection and management, had dual purposes. First, we examined in greater depth some of the problems and proposed solutions that developed in the first workshop. Second, new, equally important land-related issues were examined by our distinguished panelists and audiences. For example, this year we thoroughly examined a concept paper dealing with tax law changes that could bring about more protection of significant landscapes without the need for fee acquisition by Federal or other levels of government. As a result of this excellent critique, pertinent legislation is being introduced before the close of the 97th Congress. It is my expectation to move this "pre-digested" measure to hearings early in the 98th Congress.

In another panel, speakers discussed the broader policy considerations of the proposal to privatize the public lands or, alternately, to change the way those lands are managed while remaining in Federal ownship.

Those who participated in either of these workshops shared my excitement and pleasure in bringing together highly qualified people of diverse interests, in an effort to find areas of agreement. The advantage of the workshop approach is that with no specific bill language before the participants, they are able to address issues and concerns without having to "view with alarm" threatening provisions they feel work against their interests.

These workshops are no magic panacea, but they are a most useful tool for the Congress to use as we legislate in a watershed era of social, political, and economic change. As I did last year, I commend this committee print to my colleagues for the wealth of wisdom and the spirit of cooperation that it reflects.

Malcolm Wallop,
Chairman, Subcommittee on
Public Lands and Reserved Water.

AGENDA

WORKSHOP ON LAND PROTECTION AND MANAGEMENT

HELD BY

THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

June 14 and 15, 1982
Room 3110 Dirksen Senate Office Building

PROGRAM

MONDAY, JUNE 14

9:00 a.m. Opening Remarks by Senator Malcolm Wallop, Chairman Subcommittee on Public Lands and Reserved Water, and Other Members

9:15 a.m. Opening Remarks by The Honorable James G. Watt, Secretary of the Interior, The Honorable John B. Crowell, Assistant Secretary, Department of Agriculture, and Mr. Edwin Harper, Assistant to the President and Chairman of the Property Review Board

9:45 a.m. Morning Session, Moderated by Mr. William Reilly, President, The Conservation Foundation, and Mr. Patrick Noonan, Chairman, Conservation Resources Group

9:45 a.m. PANEL I: CRITERIA FOR PROTECTION AND MANAGEMENT

Federal and State land managers describe the authorities and guidelines for acquiring, managing and disposing of lands. Discussion will center on how these activities relate from agency to agency and with State and private land protection efforts.

Panelists:

Mr. Robert Burford, Director, Bureau of Land Management

Mr. Walter McAllester, Chief, Division of Realty, Fish and Wildlife Service

Mr. David Wright, Chief, Office of Park Planning and Environmental Quality, National Park Service

Mr. Richard Hull, Director of Lands, United States Forest Service

Mr. Fowler Sims, Acting Chief, Natural Resources Management Branch, Director of Civil Works, Office of Chief of Engineers

Mr. Lloyd Irland, State Economist, Maine

Respondents:

Dr. Jon Kusler, Jon Kusler Associates

Mr. Henry L. Diamond, Esq., Beveridge and Diamond

Mr. William Chandler, W. J. Chandler Associates

Mr. John C. Sunderland, Game and Fish Commission of Arkansas

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12:30 p.m. RECESS

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1:30 p.m. Afternoon Session, Moderated by William Reilly and Patrick Noonan

1:30 p.m. PANEL II: PUBLIC LANDS: OWNERSHIP BY WHOM AND FOR WHAT?

Cases are made for privatization, retention, and alternative management strategies for the public lands. User groups will offer their reactions.

Panelists:

Dr. Richard Stroup, Director, Policy Analysis, Department of the Interior

Mr. Michael Harvey, Chief Counsel, Minority, Senate Committee on Energy and Natural Resources

Dr. Marion Clawson, Senior Fellow Emeritus, Resources for the Future

Respondents:

Mr. Bruce Selfon, Acting Executive Director, Property Review Board

Mr. Tim Schultz, Commissioner of Rio Blanco County, Colorado

Mr. Rexford Resler, Executive Vice President, American Forestry Association

Mr. Courtland Lee, Consulting Geologist, Representing the Minerals Exploration Coalition

Dr. John C. Barber, Executive Vice President, Society of American Foresters

Mr. Jack Berryman, Executive Vice President, International Association of Fish and Wildlife Agencies

Mr. Derrick Crandall, President, American Recreation Coalition

TUESDAY, JUNE 15

9:00 a.m. Morning Session, Moderator, Mr. Patrick Noonan

9:00 a.m. PANEL III: NATIONAL PARK CASE STUDIES

Case studies. A report on the National Park Service's recently concluded study of land protection techniques, apart from purchase, that may prove useful.

Panelists:

Mr. Ric Davidge, Office of the Assistant Secretary of the Interior

Mr. Don Humphrey, National Park Service

Mr. Jack Hauptman, National Park Service

Mr. Robert McIntosh, National Park Service (Chattahoochee NRA Report)

Mr. Brian O'Neal, National Park Service (Channel Islands National Seashore Report)

Respondents:

Mr. Charles Cushman, Executive Director, National Park Inholders Association

Mr. Paul Pritchard, Executive Director, National Parks and Conservation Association

Mr. Michael Preisnitz, Vice President, Goff, Priesnitz and Associates

Mr. Ron Tipton, Specialist, The Wilderness Society

10:00 a.m. PANEL IV: LAND EXCHANGES: IN-THE-FIELD EXPERIENCE

Case studies from the Federal agencies, showing success in transferring land ownership for the mutual benefit

of the public and private sectors

Panelists:

Mr. Patrick Noonan

Mr. Vernon Lindholm, Director, Lands Staff, United States Forest Service

Mr. Dean Bibles, Director, Land Resources, Bureau of Land Management

Mr. Walter McAllester, Chief, Division of Realty, Fish and Wildlife Service

Mr. Wilis Kriz, Chief, Land Resources Division, National Park Service

Respondents:

Mr. Richard Stroup, Director, Policy Analysis, Department of the Interior

Mr. Bruce Selfon, Acting Executive Director, Property Review Board

Mr. Dan Pike, President, Open Lands Real Estate, Denver, Colorado

Mr. David Morine, Vice President, Land Acquisition, The Nature Conservancy

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12:30 p.m. RECESS

. . . .

1:30 p.m. Afternoon Session, Moderator, Mr. William Reilly

PANEL V: INNOVATIVE LAND PROTECTION AND MANAGEMENT

Emerging management approaches show how land managers have been dealing with land units, incorporating lands that are not wholly owned by the managing agency.

Panelist:

Mr. William Shands, Senior Associate, The Conservation Foundation

Respondents:

Professor Louis Twardzik, Michigan State University, Department of Parks and Recreation Resources

Dr. Jon Kusler, Jon Kusler Associates

Mr. Terrence Moore, Executive Director, Pinelands Commission

Mr. Bernard Schaefer, Assistant Chief, Division of Realty, Fish and Wildlife Service,

Mr. Richard Curry, Richard Curry Associates

2:30 p.m. **PANEL VI: TAX LAW INCENTIVES**

A close, pre-legislative look at changes in tax law that could improve the chances for protecting lands with public values.

Panelist:

Mr. Lindsay Hooper, Office of Senator Malcolm Wallop

Respondents:

Mr. Kingsbury Browne, Esq., Hill and Barlow

Mr. Edward Thompson, Esq., American Farmland Trust

Mr. George Horkan, Attorney at Law

Mr. William Hutton, Esq., Trust for Public Land

Mr. Paul Pritchard, Executive Director, National Parks and Conservation Association

Mr. Eugene Steuerle, Office of Tax Analysis, Department of the Treasury

Mr. Peter Raynor, Office of the Solicitor, Department of the Interior

3:45 p.m. **PANEL VII: USER FEES AND CHARGES**

What kinds and levels of levies on users of public lands and recreation areas are appropriate, and how should money collected be used?

Panelists:

Mr. Derrick Crandall, President, American Recreation Coalition

Mr. Barry Tindall, Director of Public Affairs, National Recreation and Park Association

Respondents:

Mr. Lloyd Irland, State Economist, Maine

William Hopkins, Delaware Dept. of Natural Resources Representing
~~Professor John Baden, Montana State University, Center for Political Economy and Natural Resources~~
The National Association of State Outdoor Recreation Liaison Officials

Ms. Helen Foxwell, Kampgrounds of America

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WORKSHOP ON LAND PROTECTION AND MANAGEMENT

MONDAY, JUNE 14, 1982

WASHINGTON, D.C.

The workshop met, pursuant to notice, at 9 a.m., in room 3110, Dirksen Office Building, Hon. Malcolm Wallop presiding.

Present: Senator Wallop.

Also present: Tony Bevinetto, professional staff member; D. Michael Harvey, chief counsel for the minority; Thomas B. Williams, professional staff member for the minority; William Reilly, president, the Conservation Foundation; Patrick Noonan, chairman, Conservation Resources Group; George Siehl, Congressional Research Service; James G. Watt, Secretary of the Interior; John B. Crowell, Assistant Secretary, Department of Agriculture; Edwin Harper, Assistant to the President, Chairman of the Property Review Board; Robert Burford, Director, Bureau of Land Management; Walter McAllester, Chief, Division of Realty, Fish, and Wildlife Service; David Wright, Chief, Office of Park Planning and Environmental Quality, National Park Service; Richard Hull, Director of Lands, U.S. Forest Service; Fowler Sims, Acting Chief, Natural Resources Management Branch, Director of Civil Works, Office of Chief of Engineers; Lloyd Irland, State Economist, Maine; Dr. Jon Kusler, Jon Kusler, Associates; Henry L. Diamond, Esq., Bevridge & Diamond; William Chandler, W. J. Chandler Associates; John C. Sunderland, Game and Fish Commission of Arkansas; Dr. Richard Stroup, Director, Policy Analysis, Department of the Interior; Dr. Marion Clawson, senior fellow emeritus, Resources for the Future; Bruce Selfon, Acting Executive Director, Property Review Board; Tim Schultz, Commissioner of Rio Blanco County, Colo.; Rexford Resler, executive vice president, American Forestry Association; Courtland Lee, consulting geologist, representing the Minerals Exploration Coalition; Dr. John C. Barber, executive vice president, Society of American Foresters; Jack Berryman, executive vice president, International Association of Fish and Wildlife Agencies; and Derrick Crandall, president, American Recreation Coalition.

OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator WALLOP. Good morning. Monday morning and only 4 minutes late, that is a pretty good start. I want to welcome everybody to this morning's workshop and just say that we were reviewing last year's record and found that to be a field that will be mined for a long time and we hope to enhance it with what we do here.

I have an opening statement by the chairman of the full committee, Senator McClure, which we would wish to have placed in the record.

[The prepared statement of Senator McClure follows:]

STATEMENT OF JAMES A. McCLURE, SENATOR FROM IDAHO, BEFORE THE PUBLIC LANDS AND RESERVED WATER SUBCOMMITTEE WORKSHOP ON LAND PROTECTION AND MANAGEMENT, JUNE 14, 1982

I WISH TO THANK SENATOR WALLOP AND THE CRS STAFF FOR PLACING THE ISSUE OF FEDERAL PROPERTY MANAGEMENT AND DISPOSAL ON THE WORKSHOP AGENDA IN AN IN DEPTH WAY. BY LOOKING AT THE "CRITERIA FOR PROTECTION AND MANAGEMENT", WE CAN GET TO THE REASONS, PURPOSES AND NEED FOR FEDERAL OWNERSHIP AND PROTECTION. WE CAN EXAMINE IF THOSE REASONS AND PURPOSES ARE STILL VALID AND THEN MORE TO THE OWNERSHIP QUESTIONS AS PROPOSED IN THE AFTERNOON PANEL.

I BELIEVE THIS IS A LOGICAL PROGRESSION ARISING FROM THE COMMITTEE'S HEARING ON MAY 18, 1982 ON FEDERAL PROPERTY MANAGEMENT AND DISPOSAL.

I AM PLEASED TO SEE MR. HARPER, CHAIRMAN OF THE PROPERTY REVIEW BOARD, HERE TO OPEN THIS WORKSHOP. MR. HARPER ALONG WITH MR. SELFON, SECRETARIES WATT AND CROWELL SHOULD BE ABLE TO CLARIFY EXECUTIVE ORDER 12348 WHICH ESTABLISHED THE BOARD AND OUTLINED ITS DUTIES.

MUCH SPECULATION STILL EXISTS CONCERNING CRITERIA FOR DISPOSAL OF PUBLIC LANDS, WHICH PUBLIC LANDS, HOW MUCH PUBLIC LAND, AND AT WHAT VALVE.

AS STATED PREVIOUSLY, I AM NOT IN DISAGREEMENT WITH THE GENERAL OBJECTIVES OF THE ADMINISTRATION'S POLICY. THE PROCESS OF IDENTIFYING AND DISPOSING OF FEDERAL PROPERTY UNDER APPLICABLE LAWS CAN BE REFINED. OUR ASSETS SHOULD BE MANAGED PROPERLY.

MY CONCERNS, AS STATED IN THE HEARING LAST MONTH, ARE:

1. WHAT IS THE ADMINISTRATION POLICY ON PUBLIC LANDS THAT HAVE BEEN WITHDRAWN AND DEDICATED TO SPECIAL PURPOSES?

2. WHAT IS THE EFFECT OF THE ADMINISTRATION POLICY ON EXISTING EXPRESSIONS OF CONGRESSIONAL INTENT ON PUBLIC LANDS SUCH AS FLPMA AND NFMA?
3. WHAT IS THE EFFECT ON PRIOR ADMINISTRATION POLICIES AND PRACTICES? AND
4. WHAT ARE THE BUDGET OBJECTIVES?

WE HAVE RECEIVED SOME ANSWERS AND I AM SURE THAT THESE QUESTIONS WILL BE FULLY ANSWERED TODAY AND TOMORROW.

IN MY STATE THERE ARE PUBLIC LANDS THAT SHOULD BE REVIEWED FOR DISPOSAL OR TRANSFER. THE PUBLIC LAND OWNERSHIP PATTERNS STILL REFLECT THE THINKING OF THE 19TH CENTURY WITH THE CHECKERBOARD PATTERNS. THE METHODS OF CORRECTING SURVEY AND OMISSION ERRORS ARE SLOW AND INEFFECTIVE. EQUITY BECOMES HARDER TO ACHIEVE AS MORE TIME PASSES AND THE ISSUES REMAIN UNSETTLED.

IT IS LOGICAL TO ADDRESS THESE ISSUES. GOOD ASSET MANAGEMENT IS IN THE BEST INTEREST OF THE NATION.

Senator WALLOP. To begin with a quote:

> The old people came literally to love the soil and they sat or reclined on the ground with a feeling of being close to a mothering power. It was good for the skin to touch the earth and the old people liked to remove their moccasins and walk with bare feet on the sacred earth.
>
> Their tepees were built on the earth and their altars were made of earth. The birds flew in the air came to rest upon the earth and it was the final abiding place of all things that lived and grew. The soil was soothing, strengthening, cleansing and healing.

These words were spoken by the Sioux Chief, Luther Standing Bear, over a century ago, showing a concern and a need for land protection by a culture and society quite different from the present society who are tenants over the same lands today.

We met here almost 1 year ago in a unique and, I think, a very exciting way to develop a genuine exchange of information for legislators, executives, and private individuals to help them make certain decisions on public land acquisition and alternatives to it.

Americans have achieved an enviable record of land protection through national parks, forests, refuges, scenic and recreational areas for all Americans. We were challenged in our first workshop to look for new approaches to land protection other than acquisition. Economic and budget considerations demanded that we look at new cost-effective ways to protect certain treasures and to acquire perhaps only the means of protection and not necessarily the title to the land.

We had some 60 panelists address these issues for 2 days in a workshop format. It allowed for exchanges of views and questions without the emotion of adversaries to a specific proposal.

The record of the first workshop has been printed and widely distributed. It is still available from the committee's document room. It is publication No. 97-34.

From the first workshop, several ideas were identified as having great potential and have attracted our further review and investigation. I hope in this second workshop for a distillation, if you will, of some of those ideas to further define or focus on them. Two of these issues, exchanges and tax incentives, fall into that category.

In the last few months certain other issues, such as privitization and the proposal to dispose of certain public lands, have been bandied about in public with more emotion than certainty. I hope the wheat may separate from the chaff in that panel.

I confess to real interest in the panel that reviews the criteria for protection. How do we come to those decisions? Who comes to them and how do we measure our options?

This second workshop is the logical extension of the first as well as the committee's May 18 oversight hearing on Federal property management and disposal. I am especially pleased that Mr. Ed Harper, assistant to the President and chairman of the Property Review Board, is with us today, along with Secretary Watt and Assistant Secretary Crowell.

We have, in addition, some 40 panelists, experts in their respective fields, who have agreed to share their experience and knowledge with us. You all do us honor by your presence and once again we have my two distinguished friends to serve as moderators for the afternoon session today, and in the morning and afternoon sessions tomorrow.

Allow me to introduce Mr. William Reilly, on my left, president of the Conservation Foundation, and next to him, Mr. Patrick Noonan, chairman of the Conservation Resources Group. You will first meet these gentlemen in their respondent role on the first two panels and then later as moderators.

In order to give everybody a chance to give a presentation and to have the respondents perform their role as interrogators and to interact with the panelists, we ask that the panelists confine their oral remarks to 5 minutes. Necessity dictates that we use this warning light device to remind folks of the time constraints as they give their panel presentations.

In this way, the workshop's special benefits will offer a two- or three- or even four-way exchange. What I propose is that the panelists go through their presentations, any Senators who may be with us at the time may then ask any questions they may have, subject as well to time constraints, and go then to the respondents for their questions or comments to develop further ideas or illuminate certain points.

And then, time permitting, and I hope it will, the general audience can comment or question any of the group that is participating in a given panel. By so doing, it then becomes a participatory process and the full print of the hearing record will be of real benefit to researchers, policymakers, and legislators.

The hearing record will remain open for 2 weeks. Those who wish to make a statement may have it included. My moderators have been given some rather tough instructions and they are to give everyone an equal chance and so I ask again that the 5-minute rule be adhered to.

Our full agenda dictates promptly starting at 9 a.m. both days that we may end our labors at about 5:30 p.m. each night. The 2-day presentations have diverse topics and I urge those who cannot be with us the whole time to choose their areas of special interest and spend that time in particular with us.

Lastly, our workshops would not have taken place had it not been, once again, for the creative work done by Mr. George Siehl and Jeff Zinn of the Congressional Research Service of the Library of Congress, and by Pamela Baldwin and Tom Ripy of the American Law Division of the Library of Congress.

Last, our workshops have done a lot by way of selecting creative members and these folks I have just mentioned and in their selection of panel members and respondents and the design of the workshop have been absolutely invaluable. I am personally grateful for their work.

Now, from time to time, the room will be crowded, it is getting that way now, and because of the high interest in those areas, and because the questions that must be asked and answered for the 1980's, and the understandable controversy that surrounds the issues of land protection and management moderators will not shy away from controversy, but they will keep it contained and civil maintaining the rhetoric at a low level or simply shut it off.

Significant legislative initiatives can arise from our deliberations and so we must be permitted to hear and consider the information and views of the panelists. Repetitive questions or distractive statements will simply waste our allotted time and diminish our end product.

What we do and where we go can equally well benefit or harm our Nation. Walk with us in the garden of benefits. We will probably, none of us, be remembered by the good we grow there and that is as it should be. Yet, let us not walk into the weed patch of history by our failure. Then history will not only remember us, worse yet, we will know it, remember it and live with it and it is not enough to care a lot. It is only enough to care enough to do something creative and find the right path. Let us now begin the search for that path.

Our first panel will be Secretary of the Interior, the Honorable James Watt; Assistant Secretary John Crowell, Department of Agriculture; followed by Mr. Ed Harper, Assistant to the President and Chairman of the Property Review Board.

Jim, would you begin.

[The prepared statement of Senator Wallop follows:]

OPENING STATEMENT OF THE HONORABLE MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER WORKSHOP ON LAND PROTECTION AND MANAGEMENT

JUNE 14, 1982

"THE OLD PEOPLE CAME LITERALLY TO LOVE THE SOIL AND THEY SAT OR RELCINED ON THE GROUND WITH A FEELING OF BEING CLOSE TO A MOTHERING POWER. IT WAS GOOD FOR THE SKIN TO TOUCH THE EARTH, AND THE OLD PEOPLE LIKED TO REMOVE THEIR MOCCASINS AND WALK WITH BARE FEET ON THE SACRED EARTH. THEIR TIPIS WERE BUILT ON THE EARTH AND THEIR ALTERS WERE MADE OF EARTH. THE BIRDS THAT FLEW IN THE AIR CAME TO REST UPON THE EARTH AND IT WAS THE FINAL ABIDING PLACE OF ALL THINGS THAT LIVED AND GREW. THE SOIL WAS SOOTHING, STRENGTHING, CLEANSING AND HEALING."

THESE WORDS SPOKEN BY THE SIOUX CHIEF LUTHER STANDING BEAR OVER A CENTURY AGO SHOWED A CONCERN AND NEED FOR LAND PROTECTION BY A CULTURE AND SOCIETY DIFFERENT FROM THE PRESENT SOCIETY WHO ARE TENANTS TODAY OVER THE SAME LANDS.

WE MET ALMOST A YEAR AGO IN A UNIQUE AND, I THINK, VERY EXCITING WAY TO DEVELOP A GENUINE EXCHANGE OF INFORMATION FOR LEGISLATORS, EXECUTIVES AND PRIVATE INDIVIDUALS TO HELP THEM MAKE THE DECISIONS ON PUBLIC LAND ACQUISITION AND ALTERNATIVES.

THIS NATION HAS ACHIEVED AN ENVIABLE RECORD OF LAND PROTECTION BY PROVIDING FOR NATIONAL PARKS, FOREST, REFUGES, SCENIC AND RECREATIONAL AREAS FOR ALL AMERICANS. WE WERE CHALLENGED IN OUR FIRST WORKSHOP TO LOOK FOR NEW APPROACHES IN LAND PROTECTION, SPECIFICALLY ACQUISITION. THE NATION'S

ECONOMIC CONDITIONS DEMANDED THAT WE LOOK AT THE BEST COST EFFECTIVE WAY TO PROTECT AND ACQUIRE IF NECESSARY.

WE HAD OVER SIXTY PANELISTS ADDRESS THE ISSUES FOR TWO DAYS IN THIS WORKSHOP FORMAT WHICH ALLOWED FOR EXCHANGE OF VIEWS AND QUESTIONS.

THE RECORD OF THE FIRST WORKSHOP HAS BEEN PRINTED AND WIDELY DISTRIBUTED. IT IS STILL AVAILABLE FROM THE COMMITTEE'S DOCUMENT ROOM. IT IS PUBLICATION NUMBER 97-34.

FROM THE FIRST WORKSHOP, SEVERAL ISSUES WERE IDENTIFIED AS HAVING POTENTIAL AND NEED FOR FURTHER REVIEW AND INVESTIGATION. THIS SECOND WORKSHOP IS A DISTILLATION OF SOME OF THOSE ISSUES TO FURTHER DEFINE OR FOCUS ON THEM. TWO OF THE ISSUES - EXCHANGES AND TAX INCENTIVES FALL IN THAT CATEGORY.

OTHER ISSUES SUCH AS "PRIVITIZATION" AND DISPOSAL OF PUBLIC LANDS HAVE COME BEFORE US IN THE LAST FEW MONTHS AND I HOPE WE CAN SEPARATE THE WHEAT FROM THE CHAFF IN THAT PANEL.

I HAVE REAL INTEREST IN THE PANEL THAT REVIEWS THE CRITERIA FOR PROTECTION. HOW DO WE COME TO THOSE DECISIONS? I LOOK FORWARD TO THAT REVIEW.

ALL IN ALL, THIS SECOND WORKSHOP IS A LOGICAL EXTENTION OF FIRST WORKSHOP AND MORE RECENTLY THE COMMITTEE'S OVERSIGHT HEARING ON MAY 18TH, ON FEDERAL PROPERTY MANAGEMENT AND DISPOSAL. I AM PARTICULARLY PLEASED THAT MR. ED HARPER, ASSISTANT TO THE PRESIDENT AND CHAIRMAN OF THE PROPERTY REVIEW BOARD IS WITH US TODAY ALONG WITH SECRETARY'S WATT AND CROWELL.

I AM GRATIFIED THAT WE HAVE SOME FORTY PANELISTS, EXPERTS IN THEIR RESPECTIVE FIELDS, WHO HAVE AGREED TO SHARE THEIR INFORMATION AND KNOWLEDGE WITH US. WE HAVE TWO DISTINGUISHED GENTLEMEN WHO WILL AGAIN SERVE AS MODERATORS FOR THE AFTERNOON SESSION TODAY, AND THE MORNING AND AFTERNOON SESSIONS TOMORROW. AT THIS TIME, I'D LIKE TO INTRODUCE WILLIAM REILLY, PRESIDENT OF THE CONSERVATION FOUNDATION AND PATRICK NOONAN, CHAIRMAN OF THE CONSERVATION RESOURCES GROUP. YOU WILL FIRST MEET THESE GENTLEMEN IN THEIR RESPONDENTS ROLE ON THE FIRST TWO PANELS AND THEN LATER AS MODERATORS.

IN ORDER THAT WE MAY GIVE EVERYBODY A CHANCE TO GIVE A PRESENTATION, AND TO HAVE THE RESPONDENTS PERFORM THEIR ROLE AS INTEROGATORS AND HAVE INTEROGATORIES WITH THE PANELISTS, WE ASK THAT THE PANELISTS CONFINE THEIR ORAL REMARKS TO FIVE MINUTES AND NECESSITY DICTATES THAT WE USE THIS WARNING LIGHT DEVICE TO REMIND FOLKS OF THE TIME CONSTRAINTS AS THEY GIVE THEIR PANEL PRESENTATIONS. BY DOING THIS, THIS UNIQUE FORM OF THE WORKSHOP MAY TAKE PLACE AND OFFER A TWO OR THREE OR FOUR WAY EXCHANGE. WHAT I PROPOSE IS THAT THE PANELISTS GO THROUGH THEIR PRESENTATIONS, THE SENATORS WITH US AT THAT TIME ASK THE QUESTIONS THAT THEY HAVE, AND WE GO TO THE RESPONDENTS AND THEY ASK THEIR QUESTIONS, DEVELOP FURTHER POINTS OR ILLUMINATE CERTAIN POINTS, AND THEN GO TO THE GENERAL AUDIENCE AS TIME ALLOWS.

BY DOING THIS, IT BECOMES A PARTICIPATORY PROCESS AND THE PUBLICATION OF THE COMPLETE PRINT FOR THE HEARING RECORD WOULD THEN BE FULL AND COMPLETE. THE HEARING RECORD WILL REMAIN OPEN FOR TWO WEEKS AND THOSE WHO WISH TO HAVE A STATEMENT MAY PRESENT IT FOR THE RECORD. THE MODERATORS HAVE BEEN GIVEN SOME RATHER TOUGH INSTRUCTIONS AND THAT IS TO GIVE EVERYONE AN EQUAL CHANCE AND SO WE WILL ASK AGAIN THAT THE FIVE MINUTE RULE BE ADHERED TO. THE FULL AGENDA OF THE WORKSHOPS DICTATES THAT WE START AT 9:00 A.M. ON BOTH DAYS AND THAT WE END ABOUT 5:30 P.M. EACH NIGHT. CONTAINED IN THE TWO DAY PRESENTATION ARE MANY DIVERSE TOPICS AND I URGE THOSE PEOPLE WHO CANNOT BE WITH US THE WHOLE TIME TO PICK AND CHOOSE THOSE AREAS OF INTEREST THAT THEY HAVE AND SPEND SOME TIME WITH US.

THE WORKSHOPS WOULD NOT HAVE TAKEN PLACE, HAD IT NOT BEEN FOR THE GREAT WORK DONE BY MR. GEORGE SIEHL AND JEFF ZINN OF THE CONGRESSIONAL RESEARCH SERVICE OF THE LIBRARY OF CONGRESS, AND PAMELA BALDWIN AND TOM RIPY OF THE AMERICAN LAW DIVISION OF THE LIBRARY OF CONGRESS. THEIR SELECTION OF PANEL MEMBERS, RESPONDENTS AND DESIGN OF THE WORKSHOP HAS BEEN INVALUABLE. I AM PERSOANLLY GRATEFUL FOR THEIR WORK AND I THINK THE SUBCOMMITTEE WILL BENEFIT FROM THESE ARRANGEMENTS. THE ROOM IS CROWDED BECAUSE OF THE HIGH INTEREST IN THIS AREA OF ACTIVITY; BECAUSE OF THE QUESTIONS THAT NEED TO BE ASKED AND ANSWERED FOR THE EIGHTIES; AND THE DEGREE OF CONTROVERSY THAT SURROUNDS SOME OF THE ISSUES IN LAND PROTECTION AND MANAGEMENT. THE MODERATORS

ARE NOT TO SHY AWAY FROM CONTROVERSY, BUT ARE TO KEEP IT CONTAINED, CIVIL AND TO KEEP THE RHETORIC AT A LOW LEVEL OR EXCISE IT COMPLETELY.

I BELIEVE THAT LEGISLATIVE INITIATIVES CAN RISE FROM THESE DELIBERATIONS AND IT IS IMPERATIVE THAT THE INFORMATION AND VIEWS OF THE PANELISTS BE HEARD AND CONSIDERED FULLY. REPETITIVE QUESTIONS OR DISTRACTIVE STATEMENTS CANNOT BE ACCOMMODATED BECAUSE OF THE FULL AGENDA.

STATEMENT OF HON. JAMES G. WATT, SECRETARY OF THE INTERIOR

Secretary WATT. Thank you, Senator Wallop. I do have a prepared statement. I would like that put in the record and I will summarize it. First of all, let me thank you for this approach to public policy formulation. It has been a very creative approach and we think a very productive one. Much progress has been realized from the one held here a year ago.

When this administration took office, we realized there needed to be some basic changes in the way that we dealt with public land acquisition and protection. And your meeting of a year ago helped build the foundation for that.

When we look at the GAO report at the different plans that have been created by the Department of the Interior and the Department of Agriculture, you can see things must be done differently if we are to bring about the proper protection of the conservation base, the recreation base that is needed in the Federal estate. Based upon the workshop of last year, we developed a new policy in the Department of the Interior for acquisition of lands through the land and water conservation funds. That document is general in scope, which was its intention.

It was a subject of review by most of the panelists and participants that were involved a year ago and again today and we think is the basis for a proper approach to acquiring those interests that are needed in real estate to carry out the Federal purpose and no more.

I would like to take the time to read the five or six points in that land policy that you have identified. It states that:

The agency should identify what land or interest in land needs to be in Federal ownership to achieve management unit purposes consistent with public objectives in the unit;

The agency should use to the maximum extent practical cost-effective alternatives to direct Federal purchase of private lands and when acquisition is necessary to acquire or retain only the minimum interests necessary to meet management objectives;

The agency should cooperate with landowners, other Federal agencies, State and local governments, and the private sector to manage land for public use or protect for resource conservation;

The agency should formulate or revise as necessary plans for land acquisition and resource use or protection to assure the sociocultural impacts are considered and that the most outstanding areas are adequately managed.

In other words, we are saying Federal Government policy is to purchase only those lands essential to meet the authorized purposes of Federal areas and that every effort will be made to accomplish these objectives using less costly methods of acquisition.

That seems to be commonsense and yet we have not always seen that as following. In response to our publication of the proposed policy in March, there were some complaints that our policy was too general. It was intended to be. And we had the comments. We had the involvement and Bill Reilly and Pat Noonan played a role in all of this and I am pleased to share the program with them again. We have met on several occasions in this regard.

In our land acquisition program, we are trying to make sure that the Federal Government will be buying only as much as is needed to carry out Federal resource protection goals, that alternative means of assuring protection are used where feasible.

Coupled with this acquisition policy or what we prefer to call protection policy, we have developed another program and that is our asset management program which has engendered, as you pointed out, Mr. Chairman, more emotion and comment than understanding. The asset management program involves the sale of excess of Federal real property and the sale of certain types of public lands.

Let me emphasize for the record, and I do this in my written statement four or five times, because I would like it to be understood, let me emphasize that those lands in the national park system, the national wildlife refuge system, Indian trust lands are exempt from this program and will not, N-O-T, will not be sold.

First, let us assure you that public lands with unique characteristics and national values such as wilderness areas, wild and scenic rivers, national or historic trails, national conservation areas, and similar types of areas of land will not be sold.

At the meeting of the Property Review Board on May 21, that Ed Harper chaired, we decided that the public lands administered by the Bureau of Land Management will be placed in three categories. The first category is those BLM lands that will be retained in Federal ownership; second, those lands which should be sold; and, third, those lands which should be deferred for further study. We are in the early stages of sorting out lands into those three categories.

At the meeting of the Property Review Board, some important decisions were made. State grant proposals, including the indemnity selections, will not be affected by the program. In other words, those lands which the States are entitled to because of their statehood act will be selected and will be given to them at a rapid rate.

We owe the State of Arizona several hundred thousand acres of land that have been due to them since statehood. We are moving at a rapid rate to transfer those lands to them. In the Carter administration 196 acres were transferred to the State of Arizona and I think we are now up to about 50,000 acres. If you believe in States rights, you get the lands into State ownership. That program will continue on.

In January 1981, I announced the good neighbor policy to encourage Governors of all States to apply under the law in existence so they could take those lands for public park and recreation purposes and have them free of charge or if for public purposes like hospitals or Government office buildings, they would pay a reduced price, sometimes $2.50 an acre for Federal lands.

That program will continue as we process the applications received prior to the President's order. For applications under that existing law that has been on the books since 1920 we will continue, of course, processing those and if the Governor makes a request for land for a city park or a recreation area We will evaluate that. If we think it is in the public interest we will take the recommendation of the Property Review Board and they will act upon it.

I think the general conclusion will be that we would continue to transfer those recreation lands. That is the recreational responsibility of the State and local government, not the Federal Government. And if we can help by being a good neighbor in transferring those lands that are uniquely valuable for recreational purposes to other entities we should continue to do that.

Third, the Alaska lands will not be involved until all State and Alaska Native selections have been completed.

Fourth, agricultural land disposals will continue as before.

Let me repeat that all public lands which contain environmental and/or economic assets of national significance will remain in Federal ownership and be managed to provide the greatest public benefits.

Then what lands are likely candidates for sale? Those lands which are proximate to cities, towns or development areas; two, scattered nonurban tracts so located as to make effective and efficient management impractical.

Three, lands designated for agricultural, commercial, or industrial development as the highest value or otherwise most appropriate use, and; four, other types of lands currently identified for sale in existing land use plants.

It should also be stressed that we are not talking about any massive selloff of Federal lands. We are dealing with more than 750 million acres of land that the Federal Government owns. There will not be a massive sale of this land.

If you take the lands that are not even eligible for consideration, the parks and the wildlife refuges and Indian lands and those types of lands, that takes out a big hunk of the estate that is not to be considered. You are really talking about an area of land that is 2, 3, 4, or 5 percent of the public holdings, which is very small in percentage terms, and which is very large in total acreage. It is millions of acres hopefully and it will generate billions of dollars hopefully. But there will not be a massive disposal of land. We will not deprive westerners or Americans—I guess westerners are Americans—we will not deprive Americans access to hunting and fishing and other traditional uses of the land.

We will not cause undue disruption of real estate markets and values.

We will protect the parks, the refuges, the wilderness, the wild and scenic rivers, the Indian trust lands, the recreational privileges, and the other important values so important to the people.

Mr. Chairman, I apologize for making that point three times, but I have been so abused by those who seek to abuse that if I don't belabor the point, I can read the headlines and the fundraising appeals in the next few weeks. So I would like to make that point that there are certain estates that are just not even up for consideration.

The President made that abundantly clear in his Executive order, and it has never been considered, and yet I continue to read to the contrary by those who seek to do mischief to the creation of good public policy.

We think that we are off to an excellent program, Mr. Chairman, and I am looking forward to moving aggressively with Ed Harper and his group as they seek to dispose of these few millions of acres to generate what we hope will be billions of dollars. We find that our public policy has generated for acquiring additional lands and managing the ones we have has come along handsomely as we implement our program, our 5-year program to improve the national parks that were allowed to deteriorate to a shameful degree because more attention was given to acquiring additional lands in fee rather than taking care of what we have.

We are confident that our program in Interior is coming along nicely. We appreciate the good support that many of you have given us in the formulation of that policy. We are encouraged with the excellent relationships that have been developed with the Department of Agriculture, John Crowell.

We think we are doing a good job in formulating policy and we must be very complimentary to you, Mr. Chairman, for last year's session. We think this is an excellent format for developing public policy.

Thank you.

[The prepared statement of Secretary Watt follows:]

Statement of Secretary James Watt, Before the Public Lands and Reserved Water Subcommittee of the Committee on Energy and Natural Resources, United States Senate at a Workshop on Land Protection and Management
June 14, 1982

Let me begin by commending Senator Wallop for his leadership in the field of public lands management and the protection of our outstanding nationally significant resources. The workshop last summer on public land acquisition and alternatives was tremendously productive.

When the new Administration came into office last year, we inherited some Federal policies which clearly were not working. We knew what the problems were, and we knew that we had to make changes to carry out President Reagan's program to restore America and the American economy.

But we did not know all the solutions.

Following the review of a series of GAO Reports and Congressional hearings, we decided that one place where there had to be a better way was in the arena of public land acquisition policy. So we set up an ad hoc study group headed by Ric Davidge, who is also Chairman of the Land and Water Conservation Fund Policy Group, comprised of the Directors of the National Park Service, Fish and Wildlife Service, Bureau of Land Management and the Forest Service.

That Study Group reviewed the full range of land acquisition tools and techniques. Based on its consideration of these issues and influenced by last July's Workshop, the LWCF Policy Group prepared a one-page draft policy statement. The LWCF Policy Group decided that the concepts contained in the draft policy should be tested in the field. Eight units in the National Park System were selected for this test as they represented the kinds of problems the policy was designed to address. Ric Davidge and the Park Service Case Study Teams will discuss this effort and their findings in detail during tomorrow's workshop. In March the draft policy was published in the *Federal Register*. Close to one hundred comments were received with overwhelming support. The policy was published in final one month ago.

This policy states that in the use of Land and Water Conservation Funds, agencies should:

-- Identify what land (or interest in land) needs to be in Federal ownership to achieve management unit purposes consistent with public objectives in the unit;

-- Use to the maximum extent practical cost-effective alternatives to direct Federal purchase of private lands, and when acquisition is necessary to acquire or retain only the minimum interests necessary to meet management objectives;

-- Cooperate with landowners, other Federal agencies, State and local governments and the private sector to manage land for public use or protect for resource conservation;

-- And to formulate, or revise as necessary, plans for land acquisition and resource use or protection to assure the socio-cultural impacts are considered, and that the most outstanding areas are adequately managed.

In other words, we are saying Federal government policy is to purchase only those lands essential to meet the authorized purposes of Federal areas, and that every effort will be made to accomplish these objectives using less costly methods of acquisition.

That would seem to be only common sense, but we can clearly see from the record that this is not the way our government has operated in recent years. Federal agencies have more often considered full fee Federal ownership as the only effective means of achieving Federal policy objectives, refusing to consider alternatives. Federal agencies have too often acquired more land than necessary, resulting in excessive cost to the government, unnecessary and unfair hardship for people whose land is taken, and inefficient management of the land brought under Federal ownership.

In response to our publication of the proposed policy in March there were some complaints that the new policy statement is too general, but it was intended to be general.

The sessions here today and tomorrow can help us in the implementation of the policy. The sessions on land exchanges, tax law incentives, purchase sellback arrangements, user fees and emerging management approaches are especially useful and timely.

So, in a sense, this workshop takes up where the last left off, and I am confident that it will be even more productive than the last.

Productive not only in the substance of the discussions but in the relationships forged during the discussions. I am very pleased to see that Pat Noonan and Bill Reilly are back again. Their participation in last year's workshop and subsequent consultations have been extremely valuable.

So I would hope that this workshop will help us to build and strengthen bridges, just as last year's workshop did.

This workshop also should help us strengthen the bridge between our new Federal policy on public land protection and management and our emerging Federal policy of assets management.

These must be viewed as components of a coordinated policy.

In our land acquisition program, we are trying to make sure that the Federal Government will be buying only as much as is needed to carry out Federal resource protection goals -- that alternative means of assuring protection are used where feasible.

Our asset management program - which has engendered a lot of new coverage - involves the sale of excess Federal real property, and the sale of certain types of public lands.

FIRST, LET ME EMPHASIZE THAT THOSE LANDS WITHIN THE NATIONAL PARK SYSTEM, THE NATIONAL WILDLIFE REFUGE SYSTEM AND INDIAN TRUST LANDS ARE EXEMPT FROM THIS PROGRAM AND WILL NOT BE SOLD. FURTHER, LET ME ASSURE YOU THAT PUBLIC LANDS WITH UNIQUE CHARACTERISTICS AND NATIONAL VALUES SUCH AS WILDERNESS AREAS, WILD AND SCENIC RIVERS, NATIONAL OR HISTORIC TRAILS, NATIONAL CONSERVATION AREAS AND SIMILAR TYPES OF LANDS WILL NOT BE SOLD.

AT A MEETING OF THE PROPERTY REVIEW BOARD ON MAY 21, WE DECIDED THAT THE PUBLIC LANDS ADMINISTERED BY BUREAU OF LAND MANAGEMENT WILL BE PLACED IN THREE CATEGORIES:

-- RETAIN IN FEDERAL OWNERSHIP;

-- SELL;

-- DEFER FOR FURTHER STUDY.

WE ARE IN THE EARLY STAGES OF SORTING OUT LANDS INTO THOSE THREE CATEGORIES.

At that meeting of the Property Review Board, some other important decisions were made:

1. State grant proposals, including indemnity selections will not be affected by the program;

2. Good Neighbor applications received before the President's Executive Order will not be affected.

3. Alaska lands will not be involved until all State and Alaska Native selections have been completed;

4. Agricultural land disposals will continue as before.

Let me repeat that all public lands which contain environmental and/or economic assets of national significance will remain in Federal ownership and be managed to provide the greatest public benefits.

THE MOST LIKELY CANDIDATES FOR SALE ARE THOSE PUBLIC LANDS, IDENTIFIED THROUGH OUR PLANNING PROCESS, WHICH ARE:

1. LANDS PROXIMATE TO CITIES, TOWNS, OR DEVELOPMENT AREAS.

2. SCATTERED NON-URBAN TRACTS SO LOCATED AS TO MAKE EFFECTIVE AND EFFICIENT MANAGEMENT IMPRACTICAL.

3. LANDS DESIGNATED FOR AGRICULTURAL, COMMERCIAL OR INDUSTRIAL DEVELOPMENT AS THE HIGHEST VALUE OR OTHERWISE MOST APPROPRIATE USE, AND;

4. OTHER TYPES OF LANDS CURRENTLY IDENTIFIED FOR SALE IN EXISTING LAND USE PLANS.

IT SHOULD ALSO BE STRESSED THAT WE ARE NOT TALKING ABOUT ANY MASSIVE SELLOFF OF FEDERAL LANDS. AT MOST, WE ARE CONSIDERING SELLING 5 PERCENT OF THE MORE THAN 700 MILLION ACRES OF THE FEDERAL LANDS -- AND AT THIS POINT THAT IS ONLY A HYPOTHETICAL FIGURE.

WE WILL NOT WEAKEN OUR NATURAL RESOURCES PROTECTION PROGRAMS.

WE WILL NOT DEPRIVE WESTERNERS OF ACCESS TO HUNTING AND FISHING AND OTHER TRADITIONAL USES OF THE LAND.

WE WILL NOT CAUSE UNDUE DISRUPTION OF REAL ESTATE MARKETS AND VALUES.

WE WILL PROTECT THE PARKS, THE REFUGES, THE WILDERNESS, THE WILD AND SCENIC RIVERS, THE INDIAN TRUST LANDS, THE RECREATIONAL PRIVILEGES AND THE OTHER IMPORTANT VALUES SO IMPORTANT TO THE PEOPLE.

THESE PROGRAMS MUST OPERATE IN TANDEM. IT IS ONLY COMMON SENSE THAT WE USE LAND EXCHANGES WHERE POSSIBLE TO GET RID OF UNNEEDED FEDERAL PROPERTY IN TRADE FOR LAND WHICH IS NEEDED TO ACHIEVE LEGITIMATE FEDERAL PURPOSES. IT IS ONLY COMMON SENSE THAT WE USE EXCHANGES WHERE POSSIBLE TO CONSOLIDATE FEDERAL LANDS, AND TO ALLOW OTHER UNITS OF GOVERNMENT TO CONSOLIDATE WHERE THIS WILL PROMOTE MORE EFFICIENT AND BENEFICIAL MANAGEMENT OF THE LAND AND RESOURCES.

We do believe that where possible the people who benefit the most from the Federal lands should pay the most to maintain them.

One example is the parks, where entrance fees have been frozen for more than a decade. There has been no adjustment for inflation since 1971. There is a clear need to adjust fees to inflation and to dedicate the increased fees to park maintenance and improvement.

We are talking about nominal increases, about reasonable fees which will not deter people from visting the parks. We are suggesting that those people who use and enjoy the parks should be paying the most to help maintain them. We should reduce the burden on those who are too poor or otherwise unable to travel to those parks where fees are charged.

Congress has approved our five-year, billion-dollar program to restore our park system, to correct the deplorable health and safety problems which existed at the time this Administration took office.

By dedicating entrance fees back to the parks and allowing them to rise to a fair level, we can reduce dependence on the taxpayers and we can ensure a program which will maintain the parks at a high level even after the current five-year catchup effort is completed.

These workshops are a wonderful opportunity for us to explore all avenues without the pressures and restraints present at official hearings.

These workshops demonstrate how responsible members of the Congress and the Administration and various private groups can work together to improve stewardship of the resources which are so vital to America's quality of life, to America's economy, and to America's national security.

Thank you once again for what you contributed last year, and thank you in advance for the counsel which I know we will be receiving in this workshop.

Senator **Wallop**. Thank you very much, Mr. Secretary. Secretary Crowell.

STATEMENT OF JOHN B. CROWELL, JR., ASSISTANT SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. **Crowell**. Thank you, Senator. I appreciate the opportunity to appear at this workshop to help in setting the stage for the panel discussions which I know will be extremely useful and valuable as they take place over the next couple of days.

First, let me say that I believe much has been accomplished by the committee. The workshop conducted last year seems to be very useful and very valuable. The agencies and the concerned groups that are interested in public land policy I think got a lot out of the Sessions last year and the benefits will continue.

There is a wide spectrum of purposes for which the several departments and agencies of the Federal Government have been directed by law to retain and manage land resources. Lands managed for multiple use encompass a broad part of that spectrum. The benefits of timber, range, water, recreation, wildlife and fish, minerals, and esthetic satisfaction are all provided for in the management of the national forests and of public domains and those make up a great deal of that 750 million acres that Secretary Watt referred to a minute ago.

Other lands, however, are managed for a narrow portion of the spectrum of potential uses. Preservation of scenic and natural wonders and provision for recreation are the principal purposes of the National Park System. Protection and enhancement of wildlife are the purposes of the National Wildlife Refuge System.

Various types of water projects provide for irrigation, for flood control, for electric power generation, for navigation through dam and lock sites. Military bases and defense installation provide defense of the Nation and places to train our Armed Forces. Buildings and grounds are necessary for the maintenance of Government business and carrying out Government functions.

To manage lands and resources for these varied purposes requires different degrees of land use and very different management skills.

Fee simple ownership of property is needed where all resources of the land are to be managed and provided by the Government or where occupancy of land is such that no other use of the property can be prospectively accommodated.

Where protection of a single resource or esthetic satisfaction is the purpose, ownership of a partial interest or an easement may be enough.

In those cases where it can be determined that property is needed for a given period of time and for no longer, such as for Government offices, a lease clearly may be all that is needed.

The purpose or purposes for which land is to be managed and the degree of its intended use obviously should determine the property interests which are to be either acquired or retained. With this in mind, as the next 2 days unroll, we need to look at the alternative means of disposing of rights which are not needed or, alternatively, of acquiring and retaining rights which are needed.

In the case of either acquisition or disposal, there are the alternatives of sale, donation, exchange, or lease of entire or part interests, either permanently or for a limited time.

Once the Government has acquired or has retained an interest in real property for some purpose, there is a need to apportion the costs of management of the land. Costs are either borne by the taxpaying public or they are recovered partly, wholly or at a profit from the beneficiaries of the purposes for which the land is being retained and managed.

The fact is that too much of the vast land areas owned by the U.S. Government have been managed or held in custodial ownership at vast and ongoing public expense, both in the form of unrecovered outlays and in the form of potential benefits not realized.

These lands represent great potential for contributing to the national well-being which, to a large extent, are unrealized. The debate over whether at least some of the lands might not make large contributions to the public welfare were they in private or state ownership is a recognition that the potential of these lands has not been realized in the past and is not likely to be realized in the future without definite changes in policy and is proposed for changes in policy, which I anticipate will be constructively addressed in the next 2 days.

I believe that the panel discussions will provide good ideas for providing helpful insight in shaping land management adjustments so as to provide for the optimum use of our finite land resources for coming generations.

Thank you, Mr. Chairman, for allowing me the opportunity to provide my thoughts on this broad and complex group of topics which will be under discussion for the next couple of days.

[The prepared statement of Mr. Crowell follows:]

STATEMENT OF
JOHN B. CROWELL, JR., ASSISTANT SECRETARY
FOR NATURAL RESOURCES AND ENVIRONMENT
UNITED STATES DEPARTMENT OF AGRICULTURE

The Subcommittee on Public Lands and Reserved Water
of the U.S. Senate Energy and Natural Resources Committee

Workshop on Land Protection and Management
June 14 and 15, 1982

I appreciate the opportunity to appear at this workshop to help in setting the stage for the panel discussions that will be held during these two days.

First, let me say that I believe much has been accomplished by the Committee, the agencies and concerned groups since last year's workshop in seeking new ways to provide for the protection and management of the Nation's resources. The Chairman and members of this Committee are to be commended for stimulating the presentation and discussion of new concepts through these workshops.

There is a wide spectrum of purposes for which the several departments and agencies of the Federal Government have been directed by law to retain and manage land resources. Lands managed for multiple use encompass a broad part of that spectrum. The benefits of timber, range, water, recreation, wildlife and fish, minerals and esthetic satisfaction are all provided for in the management of the National Forests and the public domain.

Other lands are managed for a narrow portion of the spectrum of potential uses:

a. Preservation of scenic and natural wonders, and provision for recreation are the principal purposes of the National Park System.

b. Protection and enhancement of wildlife are the purposes of the National Wildlife Refuge System.

c. Various types of water projects provide for irrigation, flood control, electric power generation, and for transportation through dam and lock sites.

d. Military bases and defense installations provide defense of the Nation and places to train our armed forces.

e. Building and grounds are necessary to house the functions of Government.

To manage lands and resources for these varied purposes requires different degrees of land use and ownership and very different management skills.

Fee simple ownership of property is needed where all resources of the land are to be managed and provided by the Government, or where occupancy of land is such that no other use of the property can be prospectively accommodated.

Where protection of a single resource or esthetic satisfaction is the purpose, ownership of a partial interest, or of an easement, may be enough.

In those cases where it can be determined that property is needed for a given period of time, such as for Government offices, a lease clearly may be all that is needed.

The purpose or purposes for which land is to be managed and the degree of its intended use obviously should determine the property interests to be retained or acquired. With this in mind, we need to look at the alternative means of disposing of rights which are not needed or alternatively of acquiring and retaining rights which are needed.

In the case of either acquisition or disposal, there are the alternatives of sale, donation, exchange or lease of entire or part interests, either permanently or for a limited time.

Once the Government has acquired or retained an interest in real property for some purpose, there is a need to apportion the costs of management. Costs either are borne by the taxpaying public, or they are recovered partly, wholly or at a profit from the beneficiaries of the purposes for which the land is being managed. The fact is that too much of the vast land areas owned by the United States have been managed or held in custodial ownership at vast and ongoing public expense, both in the form of unrecovered outlays and in the form of potential benefits not realized. These lands represent great potential for contributing to the National well-being which to a large extent are unrealized. The debate over whether at least some of the lands might not make large contributions to the public welfare were they in private or State ownership is a recognition that the potential of these lands has not been realized in the past and is unlikely to be realized in the future without definite changes in policy.

I believe the panel discussions that will follow will provide good ideas that will be helpful in shaping land management adjustments so as to provide for the optimum use of our finite land resource for coming generations.

Thank you for allowing me the opportunity to provide my thoughts on this broad and complex group of topics.

Senator **Wallop**. Thank you, Mr. Secretary. I appreciate your remarks. Mr. Harper.

STATEMENT OF EDWIN HARPER, ASSISTANT TO THE PRESIDENT AND CHAIRMAN OF THE PROPERTY REVIEW BOARD

Mr. **Harper**. Thank you very much, Mr. Chairman. It is a pleasure to be here with you and participate in the seminar. I am sure the results of the discussions over the next 2 days will be most helpful to the Property Review Board, the administration and others who are interested in the formulation and implementation of policy with respect to public lands.

This is indeed a unique occasion you have created by bringing together experts in the private sector of the Government. The caliber reflects the importance of our Nation's public lands and as well the diversity reflects the many uses of our public lands.

The Property Review Board was established by President Reagan, Executive Order 12-34A, on February 25 of this year. We are now in our initial stages of organization. Participation in this workshop is an early opportunity to discuss the role of the Property Review Board.

The specifics of the Property Review Board program in its relation to asset management of various agencies is to be discussed, I know, in this afternoon's panel by the acting executive director of the Property Review Board, Bruce Selfon.

I would like at this time to present an overview of the Property Review Board and its relationship to the overall program at present. This is in fact a management initiative of the present Property Review Board. The Federal Government, in fact, does not really even know how much property it owns. Our estimates range from 740 million acres to 780 million acres, in other words, give or take 40 million acres is the quality of our present assessment.

For that matter we don't know how all this property is being used. The concept that the President has is that this property, 780 million acres, represents long-term capital assets. We need to identify what is not needed for the legitimate Federal purposes and sell that unneeded property at a fair market value and then in effect exchange that capital asset for a reduction in our national debt.

And at the same time we feel through this process we can put our property to more productive uses and also increase local tax bases to help stimulate local economic development. The task of the Property Review Board is to oversee this management initiative. The Federal Government owns approximately a third of the U.S. land mass. The vast majority of it or 90 percent is in public lands.

These lands are, of course, for the most part managed by the Departments of Interior and Agriculture. Therefore the Property Review Board approached these Departments who are experts in land management to recommend to the Property Review Board a plan to implement this management initiative at present.

These recommendations are being developed in an asset management program of the Departments of the Interior and Agriculture. You have just heard Secretary Watt describe some of the results of the first Property Review Board, a meeting at which we considered the recommendations and adopted the recommendations of the Department of Interior.

And I would stress again one of the same points which Secretary Watt made. That is that there is not now and was never any intention to sell off our national treasures, for example, our national parks or wilderness areas, wildlife refuges, wild and scenic rivers.

The emphasis on property for sale will be on small and isolated tracts that are not economical to manage. Furthermore the sale of our public lands will not be anticipated to begin until fiscal 1984. And I think that will give us plenty of time to make sure that our policies are in place, that they are responsible and responsive.

Secretary Watt has presented his program, as he mentioned, to the Property Review Board on May 21 and I know the details of those will also be discussed in the panels in this 2-day workshop.

The Secretary of Agriculture will shortly be presenting his Department's program to the Property Review Board.

In conclusion the Property Review Board has approached its duties from the point of view of responsible, improved asset management of our public lands and we have asked the responsible agencies to come forward with their plans for implementation.

Decisions on sales of specific tracts will remain the responsibility of the land management agencies. We intend at the Property Review Board level to focus on overall policy. We intend to proceed carefully as we implement the program. We look forward to working closely with the Congress, the States, the local communities, and residents.

Thank you for this opportunity, Mr. Chairman.

Senator **Wallop**. Thank you very much, Mr. Harper. Let me begin by just asking you if legislation will be necessary to accomplish some of the purposes.

Mr. **Harper**. Yes; we will be proposing, and in fact have proposed some legislation, which would expedite this program. One of the things which needs to be clarified would be our ability to at least be authorized by Congress, to use the proceeds from some of these sales to help out on the national debt.

One of the other pieces of legislation we have asked for would be to raise the threshold of negotiated property sales to require prior approval by Congress. Right now that is set at roughly $1,000, which means that there is hardly a piece of property you can sell for $1,000. We propose raising that to $500,000.

Senator **Wallop**. Is part of the national debt considered to be that which we owe people whose property has been condemned for park acquisition but money has not been appropriated to do that?

Mr. **Harper**. We do have a substantial backlog of national parks which have been authorized and yet the Congress has not seen fit to appropriate funds for that. I think for any details Secretary Watt can help.

Secretary **Watt**. Mr. Chairman, those moneys would still be needed to act. We have added those future debts to the total national debt. You can get different figures, depending on whom you are talking to. The National Park Service gives the figure, I think, in the $800 million range for lands that need to be acquired.

That is an unrealistic figure. That is the value of the lands that they estimated they would cost when the park was authorized. For various reasons those figures are out of whack and the real figures are closer to $3 billion than $800 million.

Senator **Wallop**. The inventory problem is something that fascinates me, because I have heard that 40 million acres plus or minus—it is just a lot of ground, no matter what. Is the first task to conduct the inventory and find out indeed what we do have?

Mr. **Harper**. The first task, in fact, we have finished the first preliminary one, has not been to try to inventory every single acre we have but rather to identify those pieces of property we know we have and that we know are surplus to any of the priority objectives the Congress and the administration might have at this time.

A comprehensive inventory appraisal of 780 million acres of land is a very expensive proposition and I am sure that is one of the reasons that both the executive and legislative branch have shied away from the comprehensive inventory.

Obviously we would need to do a much, much better job of that inventory and we will be pursuing that with some vigor. We have already begun.

Senator **Wallop**. Just for curiosity, because I have never really gotten an answer, is the National Highway System included in those acreages?

Mr. **Crowell**. It would not be, because national highways are constructed lands that have been acquired by the States.

Senator **Wallop**. So they are State property rather than Federal.

Mr. **Crowell**. Yes.

Secretary **Watt**. Senator, on the inventory question, one of the reasons we have not come forward with an aggressive and even really meaningful inventory program is that the wrong people have been inventorying. You cannot expect a meaningful inventory from the land managing agency when they do not want to sell their properties.

So, in the Department of Interior, we have come up with our first cut. We think there may be as much as 4 million plus acres that could be properly sold. But I have also talked to several private groups, such as the National Association of Realtors and suggested that they ought to inventory. They know what are isolated tracts, they know what lands have commercial value and could be put into the marketplace in a more attractive manner than do we the landholders, because they see it from a market orientation. We see it from management point of view. So I am hopeful that groups such as the Association of Realtors and the other groups that would like to identify on a locality-by-locality or nationwide, or however they want to approach it, come forward and nominate to the landholding entities those lands that they think ought to be put on the marketplace because there is a higher value to be realized by society.

I think through that joint effort from those interests seeking to utilize the lands for non-Federal interests as well as from those of us in the Federal establishment we can create an inventory with market forces to help identify meaningful figures.

Senator **Wallop**. They would be from the standpoint of evaluation, but it would seem sometime that as a matter of certain management capability we would know what we had and could retrieve that information for whatever purposes the Federal Government might have under whatever administration, now or in the future. It just seems as though there ought to be some kind of——

Secretary **Watt**. You are talking about knowing what we have.

Senator **Wallop**. Yes, and where it is and who has it.

Mr. **Crowell**. Mr. Chairman, one of the reasons that there is doubt about the exact acreage is that there is a lot of land that has not been properly surveyed. We have a rough idea——

Senator **Wallop**. Is that primarily where that discrepancy lies?

Mr. **Crowell**. I think so. That is the case at least with land administered by the Forest Service. We have a very good, close idea of what we have in the Lower 48 States, but we are a little imprecise about what is in the National Forest System in Alaska at this point. That is because of the effect of transferring land to the jurisdiction of the Department of Agriculture by the Alaskan National Interest Land Act and also because the survey has not been completed.

Secretary **Watt**. And we are using the word inventory here in two connections, inventorying to determine what we have to possess and manage, and then inventorying to determine what should be disposed of to private or non-Federal sectors. Both functions need to be carried out.

Senator **Wallop**. Let me ask one last question. There are so many that we could ask. We could do this all morning. But what about military lands, where do they come into this process?

Mr. **Harper**. The Defense Department is cooperating in our efforts to inventory lands available for disposal of excess lands. Some military lands will be more salable than others. We are working with them in trying to develop good inventory of sales.

Senator **Wallop**. Can each managing agency talk to its own criteria within the general criteria?

Mr. **Harper**. Within the general criteria that we have put together as the Property Review Board. I think one of the most important things, however, that makes us a little bit different is that we do have the cooperation of Secretary Watt and Secretary Weinberger who are the major landholders or land managers, if you will, and they are anxious to see this program move forward.

So I think they will make a constructive contribution toward identifying appropriate inventory for sale and assist in this.

Senator **Wallop**. Bill, do you have some questions?

Mr. **Reilly**. I have a comment and a question. I would like to say I think the search for a more diverse set of protection policies than those confined purely to acquisition makes a great deal of sense. We are going to hear about some of the specifics and the review that has been going on tomorrow morning, I think, here and that is the search that has been going on for some time and deserves support.

I wonder if to get some sense of the details of the scope of this whether there is a budget figure that any of you could elaborate on. The total size, we have all heard, there is a $4.5 billion figure that has floated about, which is the budget revenue expectation that someone has estimated from the sale of Federal lands.

Could we have some sense of what we are talking about financially? Is that known?

Mr. **Harper**. The aggregate figure in the budget is $1 billion roughly for 1983 and $4 billion for 1984, 1985, and 1986. Even with these apparently large numbers, it represents a very small percentage of the total lands owned by the Federal Government.

Mr. **Reilly**. That is $13 billion total?

Mr. **Harper**. Yes.

Mr. **Reilly**. Those are figures which have been disaggregated to the agency? Objectives they have to meet?

Mr. **Harper**. These are basically aggregate planning figures. And as we go through the inventory process, we will go through and identify them more closely with the respective agencies.

Mr. **Reilly**. Were the numbers worked out after some sense was obtained from the agencies from the scope of what we could reasonably assume could be sold?

Mr. **Harper**. It was a mix of the two in terms of how much inventory we had already identified; that source, and reasonable extrapolation of what reasonably might be gained from those and working from the top and the bottom down to the aggregate figures of what an aggressive program might yield and that is how we arrived at the aggregate figure.

Mr. **Reilly**. On to the methods of disposal of States and others pursuant to land management, Mr. Secretary Watt. We had a great deal of discussion at the workshop that was held last time on the strengths and weaknesses of the Federal Lands Planning and Management Act, which as you know, is the policy law for the BLM. I think, there was a consensus among most of the people who appeared here, including the people from the Federal agencies, that the disposal process as set out in that law would work basically well and ought to be respected.

Is that your sense? Can we assume that the procedures set out there and in NEPA and in some of the other Federal statutes for disposal, reviews and assessments and environmental appraisals and so forth will be respected?

Secretary **Watt**. Yes. We think those laws are adequate, if management has the will to do it. We hope to create that will. There is one area that we don't have authority and that we do need authority and that is for the right to exchange lands for rounding out Federal estate, interagency and interstate and I think that a package that Ed Harper will be sending up will have language on that point.

Now, the limitations are pretty severe on that point.

Mr. **Noonan**. From your comments we are certainly talking about an ambitious program of enormous magnitude and complexity and I sense two objectives for our excess Federal land. One is to reduce the Federal debt and the second is for exchanges to reduce the in-hold of property.

Have there been any criterion or guidelines developed on which lands would be available for which purpose?

Secretary **Watt**. Yes. In the Department of Interior, we have approached a program for the Bureau of Land Management. There are 340 million acres of land to be categorized into three components, three categories.

And that criterion has been developed for its first cut and will be refined as we go along. When I start going into the details, I am not sure I am responding to your question.

Mr. **Noonan**. My concern is to what use the proceeds will be made? That is these excess Federal lands are going to reduce our Federal debt and, second, we have talked about using them as exchanges to reduce the in-hold of the property.

I am concerned about what criteria will be used to achieve which purpose. How will we know what lands are available for exchange and how will we know which lands are available for sale to reduce the debt? Two different major references.

Secretary **Watt**. Yes, that is a good question. We have not hammered that out well at all. I think, Ed, you may need to join with me on this answer. I guess that it will probably proceed on a case-by-case basis for that determination until we have handled several instances. I don't expect to have a meaningful policy until we have been applying them.

I would expect the first several exchanges that we propose will be taken to the Property Review Board for full discussion to see if we can't develop a general policy based upon the specifics of the situation presented.

I feel strongly that exchange for completing the needed acquisition is critical and we will push that in an aggressive way. The budget bounds will be pushing the other way and we will have a real conflict and controversy to present to the Property Review Board, when we try to hammer that policy out.

Ed, I think it is fair to say we have not hammered that policy out.

Mr. **Harper**. Yes. I think part of it will evolve. I think one fundamental concern we have is that our public lands not be treated—or any of our property be treated—as a free good to be used for low priority purposes, that we have some important objections would be well-served by exchanges and I agree with the Secretary that that is an important flexibility that we have in dealing with some of the problems. Because in some cases that is the only way we will be able to solve an out-and-out problem will probably be through an exchange.

On the other hand, I think probably as we get going, the emphasis will be that basically land that we are not setting aside, because it serves an important, high national priority, parks, wildlife refuges, and so forth, land that is basically for sale, if it has not been sold in a set period of time, we will also consider it as a priority for exchange.

But probably our first priority would be for sale, recognizing as we pointed out those situations where the exchange may be in the view of the taxpayer, the most equitable and only way to solve the particular situation.

Secretary **Watt**. In the policies that we submitted to the Property Review Board, we make the general recommendation that all BLM lands will be considered for sale for 2 years.

If they are not sold at the end of 2 years we will then aggressively pursue the exchange route for those specific lands. In that 2-year interval, the first 2 years, will they be available to be used for exchange? My answer is yes, and the guidelines adopted by the Property Review Board will provide that, but it will have to go to the Property Review Board on a case-by-case situation.

So I think Ed makes a good point. As we identify lands that could be shifted to non-Federal ownership we will assume that they should be sold for non-Federal use for the first 2 years of their identification. After that they will be available for barter and exchange. But that is not ironclad and we can have exceptions to it.

Mr. **Harper**. Could I add one thing and that is that we have had proposals that the land be used to barter for things other than lands. That is one of the reasons for the general concern that we not find ourselves in the position where people regard these lands as a tool to use as a lower priority exchange that Congress did not see fit to authorize.

Mr. **Noonan**. I am hopeful this workshop will help to develop some of those criteria that would be of help to you.

Secretary **Watt**. I would encourage the development and we need help.

Mr. **Siehl**. I just have one brief question. I am interested in the inventory that is being undertaken now in the name of assets management, and I wonder what is being done in order to make that record permanent. My feeling is that were we to computerize this information and keep it available, 5 to 10 years down the road it would not be necessary to go back and start from scratch again.

In the interim you would have the possibility of superimposing on that land base information any available resource information, thus providing a centralized data base on both land and resources. Such a computerized data base could serve the Congress as well as the resource management agencies.

Mr. **Harper**. If I may make one comment. In terms of some of the acreage, I know from the tangential relationship with the activities of the previous Property Review Board a decade ago that some of the properties are the same as a decade ago. The main thing that I think has changed over the period of time has perhaps been the valuations placed on the properties.

In many case we see the same properties that are available now that were available a decade ago still included.

Mr. **Crowell**. I might say, Mr. Chairman, the Forest Service has a very active inventory of lands outside of Alaska that continue their jurisdiction and that is an ongoing updated inventory, which is available for all kinds of purposes and happens to be adapted to this particular purpose as well.

Senator **Wallop**. Do those include as well as the increase the resources that may be on them or the combination of resources to——

Mr. **Crowell**. To a much lesser extent. Our resources are aggregated by national forests or by ranger district. That is much more difficult to attribute in an acre-by-acre analysis.

Senator **Wallop**. It seems like that information is maybe one of the things we might develop during this too. That is what it is that we would like to know about that which we have. If we are going to make any reasonably prompt and reasonably useful judgments from the inventories, both land and resource data would come into play at the same time.

I have one last one and then I think we better get on to the panel. We have already gone over the time limits on your agreement to come here. Many of my constituents and ranchers in other Western States worry that, while they have in the past sort of liked this idea of selling Federal lands, are now concerned that it might come on them too fast. That they would be forced into situations of either giving up the family ranching pattern or be so stuck in it that they will never get out of the family ranching pattern. This is primarily involved with banks and insurance companies.

What consideration is being given to their economic, social, and historical interests during all of this?

Secretary WATT. I would like to take a cut at that. I have to put a big smile on my face because we have been phenomenally successful in the Sagebrush Rebellion. The first thrust when I was active in the Sagebrush Rebellion was to transfer Federal lands to state governments. With the Reagan administration's good neighbor policy and working with the Governors and State legislatures that was quickly diffused and that was no longer a thrust.

And then the concept of privatization came on and I told the President the next step would be the livestock interest and we really did not want that either. What they really want is just some good landlord relationship. And if the Federal Government will be decent in dealing with the permit owners and the lease holders that too will fade as a big thrust.

I do not see, and that is why we try to make the point, Senator, I do not see that we are going to have massive land transfers that would force the livestock operators of America to make the capital investment in these lands.

I would expect that for the most part that will continue as it has, which allows me to make two points I would like to close on. What we are really talking about in the way of selling or exchanging are those lands which are excess to Federal purposes.

We are talking about surplus excess lands. The rhetoric often gets involved that all of a sudden we are going to sell Yellowstone National Park. There is no truth to that. It is outlawed in the President's order. It is not intended.

We are talking about those isolated lands, those lands that do not serve the public purpose in Federal ownership, that are excess to the Federal Government's needs. We need to keep that point.

The lands that would be acquired under our land policy and protection programs for cash or for exchange are those lands of high value for public purposes, such as wetlands and the rounding out of parks. We will try to keep acquisitions down to a bare minimum. The Federal estate is already too large. And we will only seek to acquire those additional lands needed in the Federal estate which have extremely high value for national concerns, such as migratory birds and wetland acquisition programs as we continue to accelerate in an aggressive manner and those additional acres that may be needed for other refuge purposes or for rounding out the national park system.

Additional acquisitions in whatever form, fee, or development rights, or whatever, will be limited in number and we will only be disposing of those lands excess to the Federal Government needs.

Senator **Wallop**. Thank you all three very much for coming down and starting this second workshop. I appreciate it.

The morning session will begin and it will be moderated by Bill Reilly and Pat Noonan and the first panel is a panel directly related to all of the criteria for protection and management and how we get to those. In this panel we expect Federal and State land managers to describe the authorities and guidelines for acquiring, managing, and disposing of the land.

Our panelists this morning will be Mr. Bob Burford, Director of the Bureau of Land Management; Mr. Walter McAllester, Chief, Division of Realty, Fish and Wildlife Service; Mr. David Wright, Chief of Office of Park Planning and Environmental Quality in the National Park Service; and Mr. Richard Hull, Director of Lands in the U.S. Forest Service; Mr. Fowler Sims, Acting Chief, Natural Resources Management Branch, Director of Civil Works, Office of the Chief of Engineers; and Mr. Lloyd Irland, State economist from the State of Maine.

And the respondents will be Dr. Jon Kusler of Jon Kusler Associates; Mr. Henry L. Diamond, Esq., Beveridge & Diamond; Mr. William J. Chandler of W. J. Chandler Associates; and Mr. John C. Sunderland, Game and Fish Commission of Arkansas.

I will turn the basic control of things over to my friend Bill Reilly.

Mr. **Reilly**. Thank you, Mr. Chairman. I would like to say at the outset that all of us in the field of land policy and protection, I think, have a great debt of gratitude to you, Senator Wallop, for the hearings that you organized last time and for these as well.

I must say that there were some hearings back in 1971 on national land use policy, I think under the chairmanship of Senator Jackson, that were among the best and most comprehensive and useful hearing record speaking about land throughout the seventies. It has seemed to me in looking at the hearing records of the last workshop that it wrote up as well as it sounded and we had the same kind of useful, productive, and really comprehensive consideration by a variety of interests and experts, as good as I have ever seen.

I think that we are all grateful to you and for the Congressional Research Service and George Siehl for putting all of this together.

We are going to turn now to this morning's subject, the criteria for protection and management.

There is, I think, overall a sense that these workshops are intended to take up where we left off last time. We considered broad issues in the workshop then and we are concerned now to move toward specifics, toward some of the details and the finer points, and eventually toward a discussion of legislative needs. With that I will turn to the Director of the Bureau of Land Management, Mr. Robert Burford, to open the session.

I should add one other point the panelists this morning will each have 7 minutes for their statements. The respondents will have 5 minutes for theirs. And those of you who have seen this little system up here work know that it is truly tyrannous, much more than either Pat or I could be, but if necessary we will, as we have been instructed, reinforce it.

Mr. Burford.

STATEMENT OF ROBERT BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT

Mr. **Burford**. Thank you, Bill. I guess I have got the go-ahead to begin. I was glad to be invited back to this panel. I served on the panel last year and found it very stimulating and thought-provoking. I think good works did come out of it.

This forum presents an excellent opportunity for those interested in the management and use of Federal lands, from my viewpoint, public lands, to identify issues and problems, and to offer suggestions for resolution. As you know, the Bureau of Land Management is a multiple use agency. We do look at multiple uses at almost all of our land, except where certain lands are under study for wilderness or will in the future be under wilderness designation where some of the uses will be restricted.

Our acquisition program is small. We find that of our land base is going down almost daily because of the actions that are being taken in Alaska and we do not have a large acquisition program. We did participate in the development and we support the policy statement of the Land and Water Conservation Fund Policy Group regarding the use of the Federal portion of the Land and Water Conservation Fund.

We are helping to prepare an implementation plan for the adopted policy that will emphasize alternatives to fee simple acquisitions. We will be instructing our field offices to closely examine current land acquisition plans and make necessary revisions to comply with the policy statement. The acquisition program will be linked closely to the President's asset management program.

Particularly valuable to us are some of the case studies conducted by the National Park Service to explore the alternative land protection measures and the handbook developed by the Assistant Secretary for Fish, Wildlife, and Parks containing descriptions of cost-effective land protection and management techniques.

We will be reporting the results of our implementation to the Land and Water Conservation Fund Policy Group later this summer.

Our current Land and Water Conservation Fund acquisition program reflects the policy statement adopted inasmuch as we are acquiring only those interests in the lands necessary to protect valuable national resources in congressionally authorized projects. The BLM acquisition program has been directed toward the acquisition of easements over private lands rather than outright purchase of these lands.

The fragmented ownership pattern, we are all familiar with and which BLM has to deal with all of the time, often requires crossing intervening land in State or private ownership to reach major tracts of public lands. To achieve the most efficient public land management, we must obtain access over these State or private lands.

Acquisition of easements enables us to assure the use and management of certain non-Federal lands in a manner which will protect necessary uses of Federal land yet not increase the public land base.

Our acquisition program opens public lands to mineral development, forest and range management, fire protection, hunting, recreation and a wide variety of other uses. It provides access for management purposes and allows construction of roads, fences, water developments and other improvements to benefit public land resources.

We also use Land and Water Conservation Funds to acquire lands and easements for recreation purposes where special needs are identified. Under specific legislative authorities, BLM has initiated acquisition programs for the Wild and Scenic Rivers System and National Trails System.

Although the major part of our acquisition program is the acquisition of easements, some parcels are acquired in fee to meet special needs such as seed orchards, maintenance sites and office complexes.

Of the approximately 200 parcels acquired annually, over 90 percent have been through easements rather than land acquisitions. Of the 181 easements acquired in 1980, 125 were for roads, 16 were scenic and 43 were for other uses such as range improvements and communication sites.

Land exchanges are an important tool of public land management. BLM has been exchanging lands for many years. The first general exchange authority was contained in section 8 of the Taylor Grazing Act. That authority was repealed and is now located in section 206 of FLPMA.

During the 12-year period from 1970 to 1981 inclusive, BLM attempted to complete 578 exchanges. Of this total 317 were successfully completed, 120 failed and 141 are still in progress. We feel these exchanges are beneficial to both the public and private sectors and we have a couple of examples.

The Granite Mountain exchange in California was an exchange between the Southern Pacific Land Co. and the Bureau. BLM acquired 14,500 acres of potential wilderness and Bighorn sheep habitat in the California Granite Mountains.

The Southern Pacific Co. acquired 4,160 acres of public land near Barstow, Calif., with potential for urban expansion and industrial development. Values of the two properties equalized at $730,000.

In the Abplanalp exchange in Utah, BLM acquired 627 acres to consolidate rangelands, acquire water for livestock and wildlife and to protect important sage grouse wintering habitats. The private party needed 360 acres of public lands for development of a livestock feeding lot. Values equalized at $180,000.

I think these are just three small examples of what can be accomplished by exchanges. We are aggressively pursuing an exchange program, not only on the surface, we are also looking at some new ideas on some exchanges and cooperative leasing.

Thank you very much.

[The prepared statement of Mr. Burford follows:]

June 14, 1982

STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, BEFORE THE PUBLIC LANDS AND RESERVED WATER SUBCOMMITTEE OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE AT A WORKSHOP ON LAND PROTECTION AND MANAGEMENT.

I am pleased to participate in this panel on criteria for protection and management of Federal lands. I served on a panel in last year's workshop and found it to be stimulating and thought-provoking. This forum presents an excellent opportunity for those interested in the management and use of Federal lands, and from my viewpoint, public lands, to identify issues and problems and to offer suggestions for resolution.

As a multiple use agency, the Bureau of Land Management has a multitude of programs encompassing all phases and nature of land use. Our emphasis is on land management rather than acquisition. Our acquisition program is small.

With regard to public land acquisition policy, BLM participated in the development of and fully supports the policy statement of the Land and Water Conservation Fund Policy Group regarding the use of the Federal portion of the Land and Water Conservation Fund. BLM is preparing an implementation plan for the adopted policy that will emphasize alternatives to fee simple acquisitions. We will be instructing our field offices to closely examine current land acquisition plans and make necessary revisions to comply with the policy statement. The acquisition program will be linked closely to the President's Asset Management Program.

Particularly valuable to us are the case studies conducted by the National Park Service to explore alternative land protection measures and the handbook developed by the Assistant Secretary for Fish, Wildlife and Parks containing descriptions of cost-effective land protection and management techniques.

The results of our implementation efforts will be reported to the Land and Water Conservation Fund Policy Group later this summer.

Our current Land and Water Conservation Fund acquisition program reflects the policy statement adopted by the Policy Group inasmuch as we are acquiring only those interests in the lands necessary to protect valuable national resources in Congressionally authorized projects. The BLM acquisition program has been directed toward the acquisition of easements over private lands rather than outright purchase of these lands. The fragmented ownership pattern in much of the West often requires crossing intervening land in State or private ownership to reach major tracts of public lands. To achieve the most efficient public land management, we must obtain access over these State or private lands. Acquisition of easements enables us to assure the use and management of certain non-Federal lands in a manner which will protect necessary uses of Federal land yet not increase the public land base.

Our acquisition program opens public lands to mineral development, forest and range management, fire protection, hunting, recreation and a wide variety of other uses. It provides access for management purposes and allows construction of roads, fences, water developments, and other improvements that benefit public land resources. We also use Land and Water Conservation Funds to acquire lands and easements for recreation purposes where special needs are identified. Under specific legislative authorities, BLM has initiated acquisition programs for the Wild and Scenic Rivers System and National Trails System.

Although the major part of our acquisition program is the acquisition of easements, some parcels are acquired in fee to meet special needs such as seed orchards, maintenance sites, and office complexes. Of the approximately 200 parcels acquired annually, over 90 percent have been through easements rather than land acquisitions. Of the 181 easements acquired in 1980, 125 were for roads, 16 were scenic and 43 were for other uses such as range improvements and communication sites.

Land exchanges are an important tool of public land management. BLM has been exchanging lands for many years. The first general exchange authority was contained in section 8 of the 1934 Taylor Grazing Act. That authority was repealed and instead was included in and expanded by section 206 of the Federal Land Policy and Management Act of 1976.

During the 12-year period from 1970 to 1981 inclusive, BLM attempted to complete 578 exchanges. Of this total, 317 were successfully completed, 120 failed and 141 are still in progress. Exchanges are beneficial to both the public and private sectors.

I can give you several examples of successful exchanges:

The Granite Mountain exchange in California was an exchange between the Southern Pacific Land Company and BLM. BLM acquired 14,500 acres of potential wilderness and Bighorn sheep habitat in the California Granite Mountains. In exchange, the Southern Pacific Company acquired 4,160 acres of public land near Barstow, California with potential for urban expansion and industrial development. Values of the two properties equalized at $730,000.

In the Abplanalp exchange in Utah, BLM acquired 627 acres to consolidate rangelands, acquire water for livestock and wildlife and to protect important sage grouse wintering habitat. The private party needed 360 acres of public lands for development of a livestock feeding lot. Values equalized at $180,000.

Again, I appreciate the opportunity to participate in this workshop and will carefully monitor the sessions to assure that we are aware of the issues brought before it. I look forward to reviewing the suggestions relative to land management and protection which I am sure will result from the workshops.

Thank you for your tremendous efforts in bringing this workshop together.

Mr. REILLY. Thank you for keeping within your time. Mr. Walter McAllester, Chief of the Division of Realty, Fish and Wildlife Service.

STATEMENT OF WALTER R. McALLESTER, CHIEF, DIVISION OF REALTY, FISH AND WILDLIFE SERVICE

Mr. MCALLESTER. Mr. Chairman, it is a pleasure to participate in this workshop and be able to discuss the Fish and Wildlife Service's approach to wildlife resource protection and management.

The Service acquires interests in lands and waters primarily for the 410 units of the 89 million acre National Wildlife Refuge System and also some incidental tracts for fish hatcheries and laboratories, et cetera.

The authority for acquisition of these areas lies in the Migratory Bird Conservation Act, Migratory Bird Hunting and Conservation Stamp Act, the Endangered Species Act, the Refuge Recreation Act and the Fish and Wildlife Act of 1956 and the special authorizations by the Congress for particular areas.

The authority to manage the refuge system flows out of the National Wildlife Refuge System Administration Act, which gives us authority for exchanges and the out-granting of rights and uses.

Funding for these acquisitions is through the Migratory Bird Conservation Fund and the Land and Water Conservation Fund. The money for the migratory bird account is from the sale of duck stamps and from appropriations under the Wetlands Loan Act, which will expire September 30, 1983.

We also get appropriations under the Land and Water Conservation Fund, which have been diminished in recent years. The Migratory Bird Conservation moneys are by law earmarked for land acquisition for migratory birds and expenses incidental to those acquisitions except for the cost of producing the stamps and selling them.

The acquisition of the migratory bird refuges is the waterfowl and the wetlands program that the Secretary is very supportive of. The Land and Water Conservation moneys are used to acquire essential habitat for endangered species, for wildlife oriented recreational lands that block in established refuges to provide opportunity for public education and use, and areas established by the acts of Congress.

The Service policy is to acquire land only when other means of achieving program goals or objectives such as zoning or regulation are not appropriate, available or effective. When lands and to be acquired the minimum interest necessary to reach each management objective is acquired. For example, a total of 2 million acres are protected only by easement, release or agreement and an additional 1.7 million acres are superimposed on the lands controlled by other agencies, such as our Merritt Island Refuge at the Kennedy Space Center.

The fish and wildlife resources needing protection are identified in several Service planning documents such as Endangered Species Recovery Plans, the National Waterfowl Management Plan, Regional Resource Plans, the Waterfowl Habitat Category Concept Plans, and State concept plans that identify areas of national wildlife importance.

Once the resources needing protection are identified, the NEPA process is used to lay out alternatives as to how to best protect these resources. These alternatives are summarized in a decision package which is used by the Service to select the course of action.

If acquisition is the selected course, we proceed to obtain the authorization from the Migratory Bird Conservation Commission or the Congress. The process is lengthy and the long lead time is really a problem when it is necessary to take effective action to protect threatened habitat.

There are several methods of acquisition that we use including purchase, exchange, donation, withdrawal from the public domain or transfer from other Federal agencies. Acquisition proposals may be either in fee title, easement or lease or a combination thereof. Some of the land is acquired by construction agencies as mitigation for Federal projects that destroy wildlife habitat.

Local government bodies such as counties, cities, towns and municipalities receive shared revenue payments for lands acquired. Those payments are important to the local government bodies to offset tax losses and are important to our acquisition program which usually requires State approval as well as local support.

The Service interacts with other Federal and State agencies through cooperative management agreements whereby title to the property is held either by the Service or another Federal agency and the wildlife resources are managed by the State fish and game department.

As pointed out in our detailed statement that has been submitted for the record, the Service employs various protection strategies in order to insure the Nation's fish and wildlife resources are available for the future generations.

Through this workshop, we hope to gain new ideas to sharpen our effectiveness.

Thank you.

[The prepared statement of Mr. McAllester follows:]

STATEMENT BY MR. WALTER R. McALLESTER, CHIEF, DIVISION OF REALTY, FISH AND WILDLIFE SERVICE, TO THE WORKSHOP ON PUBLIC LAND ACQUISITION AND ALTERNATIVES HELD BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER - JUNE 14, 1982

It is a pleasure for me to participate in this workshop and discuss the U.S. Fish and Wildlife Service's methods of land acquisition, criteria for protection, guidelines and authorities, and our interaction with other Federal and State agencies and private landowners.

There are three primary purposes for which the Service acquires property. The first, and largest, is for units of the National Wildlife Refuge System; second, for units of or additions to the Fish Hatchery System and third, for research centers and administrative sites. The National Wildlife Refuge System totals nearly 89 million acres; while the other types of land, the administrative sites, hatcheries, and wildlife and fishery research centers total less than 30,000 acres. As you can see, the refuge system comprises the bulk of the Service's inholdings and for this workshop I will dwell primarily with that System.

The Refuge system includes 410 refuges located in 49 states, Puerto Rico, the Virgin Islands and Pacific Island Trust Territories. Eighty five percent of the System, 76 million acres, is located in Alaska. The system also includes thousands of small wetland potholes in the north central prairie states called Waterfowl Production Areas. The Waterfowl Production Area Program includes the acquistion of nearly 20,000 easements prohibiting drainage, filling, or burning of nearly 1.2 million wetland acres.

Eighty-one million acres of the refuge system were withdrawn from the public domain, commencing with the first refuge, Pelican Island, Florida, reserved by President Theodore Roosevelt in 1903. Most of the the large areas that were established early in the creation of the system were reserved from the public domain. In 1980, the Alaska National Interest Lands Conservation Act withdrew 54 million acres for nine new Alaskan Refuges and additions to existing refuge areas previously withdrawn. However, with that action the era of withdrawal of large areas for refuge purposes is essentially over. There are applications pending with the Bureau of Land Management for less than 250,000 acres to be added to 19 existing refuges. It is not anticipated that there will be many more large areas of public domain lands indentified for refuge purposes.

The Service has been involved in the acquisition of private lands for refuges since the establishment of the National Elk Refuge in 1912. Early refuge establishments were generally on the basis of specific authorizations to create a refuge for the preservation of some particular species like elk or bison. The Migratory Bird Conservation Act in 1929 was the first general authority for the acquisition of refuges. The acquisition of private lands for refuges reached a peak during the depression years of the 1930's using emergency funds appropriated for refuge acquisitions. The Service also received the transfer of many acres acquired by other agencies during this same period for the resettlement of people from submarginal farmland such as Peidmont Refuge in Georgia. Subsequently, acreages transferred from excess military or other Federal installations have also been added to the system, for example Culebra Refuge and Cabo Rojo Refuge in Puerto Rico. Following the depression acquisition slacked off until the commencement of an accelerated wetlands acquistion program of waterfowl breeding and wintering habitat in the late 1950's with earmarking of duck stamp receipts for land acquisition and the Wetlands Loan Act in 1961. Acquisition increased with the establishment of the Land and Water Conservation Fund in the mid 1960's and important fish and wildlife areas such as Great Dismal Swamp in Virginia were acquired. For Fiscal Year 1982, land acquisition appropriations for the Service totaled $34 million.

The Fish and Wildlife Service has also had a rather extensive acquisition program utilizing its broad exchange authority. Thus, we are able to trade lands of lesser utility for higher quality wildlife lands. Exchanges must be on the basis of equal value, but equalization payments may be made by either party. This authority is not limited to lands within a State and permits the exchange of land, interests in land or products for the acquisition of lands or interest in lands. Thus we have been able to consolidate several refuges through exchange for timber products. We have also been able to protect wetlands from drainage by exchanging agricultural land acquired as part of farm units for a much larger acreage of wetlands in easement or fee. Easements are also retained on any wetlands within those lands conveyed out. We also have been able to grant rights-of-way for powerlines and roads across Service lands in exchange for desirable additions to the units. In the last 15 years we have acquired 45,000 acres by using our exchange authority. We consider the exchange process to be cost-effective since it does not require purchase money. It also has the advantage of not increasing the "Federal estate". However, exchanges do require substantial staff effort to arrange and complete. They are also subject to a high failure rate as it is difficult to get agreement on values on both properties.

The Fish and Wildlife Service probably has the greatest experience of my Federal agency in the utilization of alternatives to fee. The refuge system includes more than 2 million acres covered by easement, lease, or agreement for the protection of wildlife habitat. In addition, 1.7 million acres of the System are superimposed areas that are primarily administered for programs of other agencies.

The initial easement experience commenced in the drought years of the 30's when the Service purchased for nominal considerations refuge easements on nearly 100,000 acres in North Dakota with provisions to construct water control structures, retain water and create wetlands. Most of these easement refuges are still in existence today. In those drought years, the landowners were anxious to have a source of water created that served their needs as well as wildlife.

With the 1958 authorization of the Waterfowl Production Area program to acquire small wetlands, it was obvious that there would be neither sufficient funds nor political support for the purchase in fee title of sufficient area to maintain waterfowl propulations. Therefore, an easement was designed to purchase the landowner's right to drain, fill or level wetland areas. These easements, in conjuction with nucleus areas purchased in fee, would extend the acreage that could be protected. Although there are enforcement problems with these perpetual easements, the program has been generally successful. It has been accepted by nearly 20,000 willing sellers involving nearly 1.2 million wetland acres with total payments of over $33 million.

The easement concept was expanded recently to hunt club areas in California where habitat will be protected from destruction but will continue to be managed for waterfowl by the private owners. Other areas where habitat protection is the primary objective are being considered for easement protection.

The Service has two land acquisition funding sources: the Migratory Bird Conservation Fund and the Land and Water Conservation Fund.

The Migratory Bird Conservation Fund is used to acquire waterfowl habitat under the authorities of The Migratory Bird Conservation Act of 1929, as amended, and the Migratory Bird Hunting and Conservation Stamp Act of 1934, as amended. The funding is mostly derived from receipts of the sales of Migratory Bird Hunting and Conservation Stamps commonly referred to as the duck stamp and appropriations under the Wetlands Loan Act of 1961. All waterfowl hunters 16 years of age or older must possess a duck stamp. These stamps are currently $7.50 and are purchased at any major post office. The receipts from the sale of duck stamps are earmarked for land acquisition less expenses for the printing and distribution incurred by the U.S. Postal Service. This source of funding yields approximately $15 to $16.5 million annually, usually depending upon the success of the waterfowl hunting season. Since fiscal year 1962, the beginning of the accelerated acquisition program under the Migratory Bird Conservation Fund, the Service has acquired over 2,171,000 acres; 1,005,000 acres in fee and 1,166,000 wetland acres under easements that prohibit drainage.

The other major source of funding for the Migratory Bird Conservation Fund is appropriations under the Wetlands Loan Act. The Wetlands Loan Act, as amended, authorizes the appropriation of $200 million over 22 years, of which slightly less than $145 million have been appropriated to date. This authorization expires at the end of fiscal year 1983, at which time 75 percent of the annual duck stamp receipts will be used for repayment of funds advanced by Congress. The appropriations under this loan have varied from $1 million to $15 million annually.

The Migratory Bird Conservation Act, in addition to authorizing the purchase or lease of lands or interests therein, also established the Migratory Bird Conservation Commission. This Commission provides the authorization process for the acquisition of migratory bird refuges. It approves the establishment of the refuges as well as fixing the price of each tract that is acquired or leased. The only acquisitions utilizing Migratory Bird Conservation Funds which do not require approval of the Commission are the purchase of small wetland and pothole areas for the Waterfowl Production Area Program in the central prairie States of North Dakota, South Dakota, Minnesota, Nebraska and Montana. In addition to Commission approval, all lands acquired for national wildlife refuges with Migratory Bird Conservation Fund money require the respective State Governor's approval prior to acquisition.

The Migratory Bird Conservation Commission consists of the Secretary of the Interior as Chairman, two designated Senators, two Representatives and the Secretaries of Transportation and Agriculture. The State director of wildlife conservation or his designee is also an ex offico member of the Commission for lands being acquired within his respective State.

The Commission has approved a backlog of 123,000 acres for refuges that have not yet been acquired which have a current estimated cost of $80 million. This is contrasted with a total acquisition need for waterfowl of an additional 1.6 million acres estimated to cost in excess of $1.4 billion. This need was estimated in studies by the Fish and Wildlife Service in conjunction with the various Flyway Councils which includes State wildlife representatives and considers planned State acquisitions.

The second major land acquisition funding authority is the Land and Water Conservation Fund. The Fish and Wildlife Service utilizes a portion of the fund to protect wildlife habitats in three major catergories; (1) habitat for endangered species, (2) wildlife habitat areas of national significance that are needed for protection and conservation of wildlife resources, and (3) additions to existing Fish and Wildlife Service units which have primary fish and wildlife resource value and secondary recreational value. Areas that are authorized for refuges by specific Acts of Congress receive priority consideration for appropriation from this fund.

The general land acquisition authorities utilized for Land and Water Conservation Fund acquisitions are the Endangered Species Act, which authorizes the purchase of habitat for federally listed endangered or threatened species; the Fish and Wildlife Act of 1956 which authorizes acquisition for the protection of wildlife resources; and the Refuge Recreation Act of 1962 that authorizes the Secretary to acquire areas or interests therein which are suitable for fish and wildlife-oriented recreational development or for the protection of natural resources on lands adjacent to or within existing fish and wildlife units.

The Service's land acquisition is more diversified than one might imagine. The lands needed for wildlife refuges range from 50,000-acre marsh properties on the Texas Gulf Coast to subdivision lands within commuting distance of New York City; from barrier islands of the east coast to the estuaries of California. A major effort has been the purchase of fee and easement on thousands of small prairie potholes. In addition, fish hatcheries, fish and wildlife research centers and administrative sites are frequently within towns and cities. The needs of lands for wildlife purposes are not limited to remote, undeveloped wildlands.

Since 1977, the Service has been operating under a stated land acquisition policy. The Service's policy is to acquire land only when other means of achieving program goals and objectives, such as zoning or regulation, are not appropriate, available or effective. When lands are to be acquired, only the minimum interest necessary to reach management objectives is to be acquired.

The Service expanded its less than fee approach to wetland preservation during the accelerated wetland acquisition program in 1961. We have and will continue to place major emphasis on easement acquisitions within Waterfowl Production Areas. As I stated previously, nearly 1.2 million acres of wetlands are protected by easement in the prairie pothole region of the north central United States. In addition, easements are encouraged for refuge purposes throughout the Nation. On the Grasslands and Butte Sink Wildlife Management Areas in California, we are currently utilizing easements rather than fee purchase. To date, 11,000 acres of easements have been purchased in these areas. These easements prohibit conversion of the lands to agricultural, residential, commercial or industrial development and permit their continued operation as hunting clubs. The cost of maintaining this important wintering habitat is thus borne by the clubs.

If fee title is required, full consideration will be given to extended use reservations, exchanges or other alternatives that will lessen the impact on the owner and the community. Donations of desired lands or interests are encouraged. In carrying out this policy, the Service, in the future, will have a land protection plan which conforms to Departmental and Service policies and all applicable laws for any refuge, fish hatchery, research station or other Service unit having an active acquisition program.

Acquisition is on a willing seller basis; however, the Service may acquire land through litigation in order to prevent usages that would cause irreparable damage to the resources for which the unit was established or in order to effectively manage and develop the unit.

Thus far, I have covered the type of land we buy, our authorities for acquiring these lands and our acquisition policies. At this point I would like to discuss the Service's land acquisition planning procedure and how these acquisitions are formulated, prioritized and justified.

The major ingredients in planning for Fish and Wildlife Service projects which may involve land acquisition are (1) defining and amplifying the objective or purposes (2)assuring public awareness of the problem or objective in the planning process followed, (3) application of the planning process contained in NEPA regulations to seek a solution to the problem, and (4) reporting the planning procedures followed and identifing a recommended action.

The first phase of planning is the basic or broad planning which identifies important resource problems and then, through a preliminary or framework assessment develops the conceptualized scheme to set objectives to resolve the problems. In the migratory bird land acquisition program the needs for the migratory bird resource are broken down into 33 habitat categories; for example the wintering habitat on the Texas Gulf Coast is one category, the black duck breeding and wintering habitat along the Atlantic Flyway is another and the Lower Mississippi Delta hardwood wintering habitat is yet another.

Within each category the habitat necessary to perpetuate the waterfowl resource is delineated and individual areas within the category are identified and evaluated. The evaluation of areas within a category produces what we call a concept plan. Within the Land and Water Conservation Fund the individual States have been studied and the important fish and wildlife resources to be protected, other than waterfowl, are identified. The end product of this primary planning comes in the form of a special report which serves as the basis for detailed studies. The Migratory Bird Program has concept plans by category, the Mammals and Non-migratory Birds program has concept plans by state, and the Endangered Species Program, has recovery plans to identify the needs for individual threatened or endangered species. These planning processes provide information on the inventory of wildlife resources, their individual biological value and the threats to the resource. This information is utilized to determine which resource areas require protection and their priority for detailed planning.

Inherent in the land acquisition planning is the need for the public to be aware of the proposed project. At a minimum, contact with the affected landowner or landowners, local political entities and interested political leaders, including the appropriate congressional delegation, should be made to keep them aware of the problem involved and the scope of the alternatives under consideration.

In addition, the National Environmental Policy Act (NEPA) and its applicable rules and regulations describe a planning process for all Federal agencies. Basically, the NEPA process has been adopted by the Service and is followed in planning any land acquisition proposal.

The next step is the development of decision documents. A decision document is the final planning package, containing all the information necessary for the Director to make a decision on the proposed land acquisition project.

While NEPA requires an analysis of enviromental conseqences, various ecomonic, social or cultural impacts are also identified or predicted within the Environmental Assessment or Environmental Impact Statement. The Service's policy on land acquisition calls for a comprehensive review of all options which would accomplish the Service's objectives. Land acquisition is to be considered only after all "non-acquisition" options have been explored and rejected.

In addition to the Environmental Assessment or Environmental Impact Statement, the decision package includes a realty land acquisition feasability report giving cost estimates, an engineering assessment including potential development costs, and a statement of compliance with all policies, regulations and laws including, for example, requirements under wetlands and flood plain Executive Orders, OMB circular A-95, Coastal Zone Management Act consistency, etc.

At this point, assuming everything is in order, with alternatives, wildlife values and threat of destruction well documented, the Director's approval is obtained to proceed. Then another series of time consuming procedures commences, that is the authorization and appropriation process.

Congress has given us general authorization to acquire habitat for migratory birds, endangered species, and to add to existing areas units under the Refuge Recreation Act. If, however, a new unit is to be acquired with Land and Water Conservation Funds, it is the policy of the Service to seek specific authorizing legislation and a legislative proposal must be prepared. As you know, this proposal must clear OMB and be reported by the appropriate Congressional committees by May of the year preceeding the budget year. This generally requires a minimum of 1 1/2 years.

The budget process for obtaining Land and Water Conservation Funds begins two full years prior to appropriations. This added to the length of time required for legislative authority makes a total lead time for specifically authorized projects a minimum of 3 1/2 years. Such a time frame makes it extremely difficult to react to habitat threats and respond to willing sellers. The time lag creates a further problem in context of today's inflation of land values. By the time the money is available, land values may have increased to the point that the available money is not sufficient. This creates another delay to get an additional appropriation or to reprogram money from other projects. When authorizing legislation has been enacted and appropriations are available the Service's land acquisition phase begins.

Appraisals are the first order of business. An accurate, complete and thorough estimate of just compensation for the rights being acquired is essential. The public purse must be safeguarded from a wasteful expenditure of funds. However, it is just as important that the landowner be safeguarded from an abuse that could unfairly deprive him of adequate compensation. A landholding, however small, could represent the entire life's wealth of an individual.

Appraisals are conducted by either staff or contract appraisers and in cases of high value or unique properties at least two separate appraisals are performed. All appraisals are analyzed by a review appraiser who, by design, is isolated from management decisions so as not to be influenced one way or another. Every effort is made to avoid agency bias on the appraisal. Negotiations involving price do not begin until the appraisal is signed as approved by the review appraiser.

As stated in the Service's land acquisition policy, only the minimum interest necessary to meet management objectives is to be acquired. Fox example, an easement agreement between a landowner and the U.S. Fish and Wildlife Service that includes management objectives may provide an adequate alternative to full fee purchase. However, these agreements generally limit the broad range of wildlife management practices available to the Service, since the landowners retains some measure of control over the property. The Fish and Wildlife Service would not be able to actively manage or develop the area for wildlife. On the other hand, utilization of the property by the landowner could be limited to present land uses and to those uses which do not adversely impact the wildlife or the habitat. Further, the landowner would continue to pay taxes on the property, and local or State Governments would not receive any revenue payments from the Department.

If fee title is needed, full consideration is given to extended use reservations, exchanges or other alternatives. Negotiations are conducted by staff personnel. The Service's negotiators are fully trained and have the knowledge required to give full consideration to reservations or other alternatives that can be utilized to lessen the impact on the owner or the local economy. In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, negotiations involving price do not begin until the landowner is furnished a Just Compensation Statement which states the approved appraised fair market value of the property and the basis of how the value was derived. The landowner is also advised of all his rights under law regarding relocation assistance and compensation.

In addition to the purchase price and relocation benefits, the Service also obtains the title evidence and conducts any land surveys which are necessary, at no cost to the landowner. Usually the only costs incurred by a property owner selling to the Service are the clearance of title defects which may be necessary.

The objective of negotiations is to obtain a willing seller purchase agreement, at a price which is fair to both the landowner and the Government and achieves the program goals and objectives. I take pleasure in saying that more than 95 percent of the Service's land purchases were from willing sellers over the recent years. Declarations of Taking are not the rule, but the exception. Of this small percentage, some of the condemnations are simply a convenience to clear title.

The Service's land acquisition decisions are not spur of the moment actions, but well planned and justified proposals which throughly explore all alternatives to the action. It is a lengthy process and as a general rule, acquisitions require about 3 years or more from the initial proposal to vesting title in the United States. Another year or two must be added for areas requiring specific legislation. This long lead time presents a long period of uncertainty to affected landowners, frequently creating personal hardship. All too often, in cases such as this, the habitat is irreparably damaged by conversion to other uses. In some cases, non-profit organizations, such as The Nature Conservancy, have purchased and held critical properties until we are able to complete the process.

An orderly land acquisition program that relies on willing sellers requires stable funding and the flexibility to move the funds to the project when a landowner decides to sell. Our experience has been that after long negotiations an owner finally decides to sell only to find we no longer have money to buy. A stable program is also essential to maintain a balanced staff of well trained professionals.

In regards to management of refuge lands, the primary purpose is preserving, managing, or creating habitat to meet authorized Federal responsibilities, such as programs for the conservation of endangered species and migratory birds. Beyond that compatible economic uses, involving timber, grazing, oil and gas, are allowed. These multiple uses create revenue which goes into a fund to pay local governments as a substitute for real estate tax loss on lands acquired by the Service. These payments are important to local taxpayers who should not bear disproportionate costs for national programs.

Congress has long recognized that, compared to public domain lands, which had never been on the tax rolls, Fish and Wildlife Service acquisition of lands does cause a loss of taxes and thus has a larger impact on the community. Congress has also recognized that Fish and Wildlife Service acquired lands, unlike those of the National Park Service or timbered/range public lands, are far less likely to produce revenues to share with local jurisdictions or to generate secondary economic benefits. Public domain lands in the refuge system are entitlement lands under the Payment in Lieu of Taxes Act administered by the Bureau of Land Management like other public domain lands. However, Congress has deemed it desirable to have an individualized revenue sharing program for the acquired lands in the refuge system. This is critical to maintain local acceptance and support for these national areas, many of which require Governor's approval of acquisition. Prior to this authorization there was substantial local opposition to the removal of private lands from the tax rolls.

The Refuge Revenue Sharing Act authorizes payment of the greatest of three-fourths of 1 percent of the appraised value, 25 percent of the net receipts from the area, or 75¢ per acre. That Act also authorizes appropriations to make up the difference when the net receipts from refuges are insufficient to pay the local governments the amounts they are due. Full payments are currently estimated to average $2.35 per acre. Those payments are important to local government bodies and to our acquisition programs.

Land in the National Wildlife Refuge System not only sustains fish and wildlife populations but also provides opportunity for scientific research, environmental education and wildlife-oriented recreation including wildlife observation, fishing and hunting. The bulk of this use is on refuges located in coastal or urban locations near large population centers. They present an attractive opportunity for developing both an educational and recreational resource for the urban dweller.

Lands comprising the National Wildlife Refuge System cannot be subject to disposal without a specific Act of Congress or approval by the Migratory Bird Conservation Commission. However, as mentioned earlier the Service has broad exchange authorities. Under this exchange authority, the Service has and will continue to divest lands of lesser utility for wildlife purposes in exchange for higher quality wildlife lands, particularly for lands necessary to block in areas to meet refuge management objectives. In fact, the Service hopes to give increased emphasis to an exchange program as one of the alternatives to new land acquisition.

Our land acquisition efforts are sometimes aided by tax benefits accruing to landowners who sell their property to the Service. IRS has ruled that landowners reinvesting the proceeds from a sale of land to the Service will have the taxes on those proceeds deferred. The basis for that ruling is the condemnation authority which the Service has.

Congressman Lagomarsino of California has introduced H.R. 6465 that would amend the Internal Revenue Code of 1954 to exclude from gross income the gain from sales of real property to certain organizations for conservation purposes. Another tax incentive, but this one on the State level, promises to help conserve our wetlands areas. Minnesota has recently passed a two-phase tax relief law that will benefit owners of wetlands. Under the law, landowners of wetlands do not pay taxes on that property and they also receive a tax credit for that same property. Similar laws are being considered in other States.

I appreciate this opportunity to present this paper to your land acquisition workshop.

Mr. **Reilly**. Thank you, Mr. McAllester. Mr. David Wright, Chief of the Office of Park Planning and Environmental Quality, National Park Service.

STATEMENT OF DAVID WRIGHT, CHIEF, OFFICE OF PARK PLANNING AND ENVIRONMENTAL QUALITY, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. **Wright**. Thank you very much. It is a pleasure for us to be here and participate in this workshop. We are grateful for the opportunity. I have a statement which I will summarize.

When the first national parks were created over 100 years ago, there was no grand design for a National Park System. The National Park System Organic Act of 1916 defined the dual purpose of the parks, to conserve the scenery, natural and historic objects and wildlife and to provide for public enjoyment of those resources in such a way to leave them unimpaired for future generations.

The National Park System has grown over the years. The System's 333 units are remarkably diverse, including monuments, memorials, parkways, seashores, trails, and riverways as well as national parks. The mission of the National Park Service has grown with the System. Today the Service has two basic responsibilities. That is to manage and protect the units in the National Park System and to assist others in the protection and use of the Nation's natural, cultural, and recreational resources.

The Service has developed stringent criteria for evaluating proposed new additions to the National Park System. These criteria include significance, suitability, and need for protection. The National Park System plan provides a basis for evaluating whether natural or cultural resources are of national, State, or local significance. The plan describes various natural and historic themes, helping to define what is an outstanding example of a particular type of resource.

Even if an area is outstanding and meets the criteria for significance, it may not be appropriate for management as a unit of the National Park System. The System may already contain adequate representation of that type of resource.

States, other Federal agencies, and the private sector may already be managing the area and making it available for public use. If the area is already adequately protected, there may be no need to make it part of the National Park System.

Making a place into a national park does not automatically protect it. Resource protection in the National Park System requires different activities according to the purpose of the individual units. There is no simple answer to what is an adequate level of protection or management.

In some parks, preservation of a pristine ecosystem is necessary and private uses are likely to conflict with natural processes. In other areas where scenic and cultural values are primary resources, private uses of the land for farming or other activities may be a part of the resource worthy of protection.

Every unit of the National Park System has been determined by Congress to merit protection, but not every parcel of land needs to be protected or managed in the same way. Current policies encourage planners and managers to consider the full range of land regulations before resorting to fee simple purchases, such as cooperative agreements, easements, zoning, and other regulations.

The National Park Service cannot independently protect all of the land worthy of protection. We can help States, local governments, landowners, and the private sector to carry out their responsibilities to be good stewards of the Nation's natural and cultural resources.

Looking to the future, the National Park Service can play an important role in identifying those areas where donations of land or interests in land would be encouraged for conservation purposes.

While protection of land within National Park boundaries is primarily a Federal responsibility, cooperation with local government and private property owners can achieve many National Park Service objectives without relying entirely on fee simple purchases of private land.

Protecting the landscape and public health outside of current park boundaries is primarily the responsibility of State and local governments but National Park Service can provide technical planning assistance and cooperative efforts to reduce conflicts.

Finally, many other natural, scenic, and historic areas deserve to be protected, but are not of such quality, scale, or importance to merit direct Federal management. For these areas of State, local, or regional significance, National Park Service can provide information and recommendations on sound land management practices.

After a period of rapid growth in new areas, National Park Service priorities for protection are focused on restoration on rehabilitation in existing parks. We will be continuing efforts to protect the land in existing units through creative alternatives to fee purchase and we will be creating partnerships to protect other areas worthy of recognition.

Thank you.

[The prepared statement of Mr. Wright follows:]

Statement by David Wright, Chief, Office of Park Planning and Environmental Quality, National Park Service, Department of the Interior, Accompanied by Donald Humphrey

National Park Criteria

When the first national parks were created over 100 years ago, there was no grand design for a system. It took almost a half a century after the basic commitment to the national park idea before Congress established the National Park Service as an agency and envisioned a system of parks.

The National Park System Organic Act of 1916 defined the dual purpose of the parks: to conserve the scenery, natural and historic objects and wildlife, and provide for public enjoyment of those resources in such a way to leave them unimpaired for future generations. The National Park System has grown over the years as the result of political processes and the evolution of American attitudes about our relationship to the environment. The System's 333 units are remarkably diverse, including monuments, memorials, parkways, seashores, trails, and riverways as well as "national parks" such as Yosemite and Yellowstone.

The Mission of the National Park Service has grown with the system. Today, the Service has two basic responsibilities:

- to manage and protect the units in the National Park System, and
- to assist others in the protection and use of the Nation's natural, cultural, and recreational resources.

Criteria for New Areas

The Service has developed stringent criteria for evaluating proposed new additions to the National Park System. These include:

1. Significance. The National Park System Plan provides a basis for evaluating whether natural or cultural resources are of national, State, or local significance. The plan describes various natural and historic themes, helping to define what is an outstanding example of a particular type of resource. Although "national significance" is often in the eye of the beholder, for the National Park Service it usually means the best or most outstanding example of a natural or cultural feature.

2. Suitability. Even if an area is "outstanding" and meets the criteria for signficance, it may not be appropriate for management as a unit of the National Park System. The System may already contain adequate representation of that type of resource; the area may lack integrity because of changes in the natural or historic scene, or it may be a size or configuration which is not appropriate for Federal management.

3. Need for Protection. States, other Federal agencies, and the private sector may already be managing the area and making it available for public use. If the area is already adequately protected, there may be no need to make it part of the Park System.

Management Activities

Making a place a national park does not automatically protect it. Resource protection in the National Park System requires different activities according to the purpose of the individual units. There is no simple answer to what is an "adequate" level of protection or management. In some parks, preservation of a pristine ecosystem is necessary and private uses are likely to conflict with natural processes. In other areas where scenic and cultural values are primary resources, private uses of the land for farming or other activities may be part of the resource worthy of protection.

Every unit of the Park System has been determined by Congress to merit protection, but not every parcel of land needs to be protected or managed in the same way. Current policies encourage planners and managers to consider the full range of land regulations before resorting to fee simple purchases.

Practical financial constraints on management and operation as well as land acquisition require that NPS concentrate on taking better care of what we now have than adding new units to the System. The most immediate challenge is to help others protect important resources both within and outside of current park boundaries.

Cooperation for Protection

The National Park Service cannot independently protect all of the land worthy of protection. However, we can help States, local governments, landowners, and the private sector carry out their responsibilities to be good stewards of the Nation's natural and cultural resources.

Congress recently emphasized the need to provide incentives for private conservation initiatives in the Tax Treatment Extension Act of 1980. This act encourages donations of conservation easements for recreation, natural habitat, and open space areas, including those identified for protection pursuant to a clearly delineated conservation policy. Looking to the future, the National Park Service can play an important role in identifying those areas where donations of land or interests in land would be encouraged for conservation purposes.

Private lands within park boundaries are certainly the top priority for cooperative efforts for protection. While protection of land within national park boundaries is primarily a Federal responsibility, cooperation with local governments and private property owners can achieve many NPS objectives without relying entirely on fee simple purchases of private land.

Land adjacent to park boundaries also may be of special national importance. Park resources are frequently threatened by air and water pollution or other effects of adjacent land uses. Protecting the landscape and public health outside of current park boundaries is primarily the responsibility of State and local governments, but NPS can provide technical planning assistance and cooperative efforts to reduce conflicts.

Finally, many other natural, scenic, and historic areas deserve to be protected, but are not of such quality, scale, or importance to merit direct Federal management. For these areas of State, local, or regional significance, NPS can provide information and recommendations on sound land management practices.

The Mission of the National Park Service will continue to evolve, reflecting changes in social, economic, and environmental concerns of the Nation. After a period of rapid growth in new areas, NPS priorities for protection are focused on restoration on rehabilitation in existing parks. We will be continuing efforts to protect the land in existing units through creative alternatives to fee purchase and we will be creating partnerships to protect other areas worthy of recognition.

Mr. **Reilly**. Thank you, Mr. Wright. Mr. Richard Hull, Director of Lands, the U.S. Forest Service.

STATEMENT OF RICHARD D. HULL, DIRECTOR OF LANDS, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. **Hull**. Mr. Chairman, I appreciate the opportunity to participate in this workshop and describe the criteria for protection and management of lands in the National Forest System. I have a statement for the record. You may want to pass this out.

It provides a brief review of the factors and criteria involved in the establishment and development of the National Forest System. Then I will describe policies and criteria being utilized to provide the most effective and efficient landownership base on which the National Forest management program can be accomplished.

I will summarize very briefly that establishment process and then those policies and criteria. The establishment and development of the National Forest System, as it exists today, reflect the history of public land policy development in this country.

The initial policy regarding the public lands was to place them in private ownership.

By 1891, there was sufficient concern about future timber supply, the lack of reforestation of cutover lands and the adverse effect of cutting on water supplies, that Congress decided that all of the public land should not go into private ownership. In the Weeks Act of March 1, 1911, authorization was directed to the Secretary of Agriculture to examine, locate, and recommend for purchase such forest as in his judgment may be necessary to the regulation of the flow of navigable streams or for the production of timber.

These acts provide specific direction to the types of land which could be reserved or purchased. That is, no national forest shall be established except to improve the forest within the boundaries or for the purpose of securing favorable conditions of water flow or to furnish a continuous supply of minerals.

Mr. Reilly. Excuse me, Mr. Hull, would you move the microphone just a little closer. Thank you.

Mr. Hull. They also provided limitation. It is not the purpose or intent to authorize the reservation of various lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

The classes of lands to be included in the national forest were further defined in a joint letter of the secretaries of Agriculture and Interior, which President Taft approved in 1910.

These guidelines are quoted in my statement and I will not attempt to summarize them.

By 1923, the national forests were established throughout the west in the southern Appalachian Mountains and the White Mountains of New Hampshire. There was a total of 146 national forests embracing 182 million acres of which about 86 percent was public land.

Up to 1923, establishment of national forests and the addition of land thereto was motivated primarily by resource protection and conservation concerns. Although there were long-term social and economic implications, they were not the primary consideration.

This changed significantly during the depression years of the 1930's. The act of March 31, 1933 appropriated funds for the dual purpose of relieving employment and promoting conservation of natural resources. Under this program the Civilian Conservation Corp. was established and funds were appropriated for acquisition of lands on which CCC enrollees could work on conservation projects.

In 1935, the resettlement administration was established and a program of acquiring submarginal farmlands and resettling families from those lands was initiated. Some 11 million acres of land previously used for agricultural purposes were acquired. One point 7 million acres came into the national forest and an additional 3.8 million acres were incorporated into the national grasslands in 1966.

The several acquisition programs were curtailed by the advent of World War II. At that time, there were 160 national forests with net acreage of 177 million acres.

Congress recognized the need to deal with the problem of scattered ownership in the 1920's. In 1922 the General Exchange Act authorized the Forest Service to use land exchange as a method of consolidating ownership of lands reserved from the public domain. In 1925, the Weeks Act was amended to provide for exchange of acquired lands. To date the Forest Service has disposed of 3 million acres by exchange.

In 1960 Congress directed in the Multiple Use-Sustained Yield Act that national forest lands, although acquired for purposes of watershed protection and timber production would be administered for outdoor recreation, range, timber, watershed, wildlife, and fish purposes. However, no authority or program existed to acquire lands specifically for the additional management purposes.

Mr. Chairman, I have given you an oversimplified history of the national forest establishment and have attempted in my statement to demonstrate that while these acquisition guidelines remain unchanged, there have, over the years, been several changes for the utilization of national forests.

Now, briefly on policies and crteria for land management and landownership adjustment. A basic forest service goal is to achieve the pattern of resources that will best meet the needs of the American people. The major objectives of the landownership adjustment program in support of this goal are found in the Forest Service Manual.

Pursuant to section 6 of the National Forest Management Act, the decision relating to how best to meet these objectives will be reflected in individual national forest management plans. These plans must be coordinated with State and local planning efforts. Such plans are now being developed on each national forest.

This planning effort is probably the most difficult task ever undertaken by public land managers. It requires specific identification of management objectives for each national forest and identification of landownership adjustments necessary to help reach these objectives.

While we are certain that all the lands within the national forest are suitable for inclusion under the various congressional acquisition and reservation requirements, we estimate that some 15 percent are not fully contributing to obtainment of management obectives.

This is due to several longstanding difficulties. First, most of the property lines are not identified. Two, there is no existing access to many lands. Three, some lands are simply too small to efficiently manage and, four, some tracts are encroached upon, have been engulfed in community expansions or have title deficiencies which limit their utility.

At the same time, acquisition of certain lands may be needed to improve management and resource development.

When completed, each forest plan will include specific guidelines for landownership adjustments such as purchase, donation, exchange, right-of-way acquisition, other partial interest acquisition transfers, and interchanges. These guidelines will reflect the resource and management needs and opportunities of the particular national forest system unit. Under the existing regulations the following considerations will be reflected in the planning process that develops the guidelines.

That is landownership needs to meet resource goals and objectives; landownership patterns that limit resource management, protection and use of national forest system lands; opportunities to meet identified public needs for goods and services; protection and enhancement of the environment; administrative efficiency; landownership adjustment needed to meet community or other special needs when in the public interest; alternative protection and management strategies; achieving a balance of resource uses from both public and private lands to best meet present and future national needs; coordination with other Federal agencies, State and local governments and to the extent feasible non-Federal owners; input from the public participation process; legislative mandates; and, finally, the policies of the Department of Agriculture and the Forest Service relating to individual landownership functions.

Mr. **Reilly**. Excuse me. Do we have a red light? Could you break off in a sentence or two?

Mr. **Hull**. I certainly can. There are literally hundreds of laws relating to this subject and I have touched on only a few. Regretfully, I have had to describe the criteria in quite general terms. We do not expect any increase in the existing 190 million acres and the major capacity remains to deal with the unconsolidated lands and landownership patterns.

The specific guidelines for accomplishing this objective are unique to each national forest unit and are now being developed as part of the land management plan process. The Forest Service will be pleased to provide information about any specific areas.

Thank you.

[The prepared statement of Mr. Hull follows:]

STATEMENT OF
RICHARD D. HULL, DIRECTOR OF LANDS
FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE

WORKSHOP ON LAND PROTECTION AND MANAGEMENT
JUNE 14-15, 1982

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I appreciate the opportunity to participate in this workshop and describe the criteria for protection and management of lands in the National Forest System.

To do this effectively, I plan to provide a brief review of the factors and criteria involved in the establishment and development of the National Forest System. Then, I will describe policies and criteria currently being utilized to provide the most effective and efficient landownership base on which the National Forest management program can be accomplished.

Establishment and Development

The establishment and development of the National Forest System, as it exists today, reflect the history of public land policy development in this country. The initial policy regarding the public lands was to place them in private ownership. By 1870, concern began to develop about protection of forest land and availability of future lumber supplies. Removal of forests to make way for agriculture and to provide lumber proceeded at a rapid rate. By 1891, there was sufficient concern about future timber supply, the lack of reforestation of cut-over lands, and the adverse effect of cutting on water supplies, that Congress decided that all of the public land should not go into private ownership.

The Creative Act of March 3, 1891, authorized the President to set apart and reserve in any State or territory having public land bearing forest, any part of the public lands wholly or in part covered with timber or undergrowth, whether commercial value or not, as public reservations. The Organic Administration Act of June 4, 1897, followed and provided objectives and limitations regarding the establishment and management of National Forest areas. Specifically, "no National Forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes."

More fully to define the classes of land to be included in the National Forest, President Taft approved a joint letter of February 7, 1910, from the Secretaries of Agriculture and the Interior, specifying that:

"1. Lands wholly or in part covered with brush or other undergrowth which protects streamflow or checks erosion on the watershed of any stream important to irrigation, water power, or to the water supply of any city, town, or community, or open lands on which trees may be grown, should be retained within the National Forests, unless their permanent value under cultivation is greater than their value as a protective forest.

"2. Lands wholly or in part covered with timber or undergrowth, or cut-over lands which are more valuable for the production of trees than for agricultural crops, and lands densely stocked with young trees having a prospective value greater than the value of the land for agricultural purposes, should be retained within the national forests.

"3. Lands not either wholly or in part covered with timber or undergrowth, which are located above timberline within the forest boundary or in small bodies scattered through the forest, making elimination impracticable, or limited areas which are necessarily included for a proper administrative boundary line, should be retained within the national forests.

"4. Lands not either wholly or in part covered with timber or undergrowth, except as provided for in the preceding paragraphs, upon which it is not expected to grow trees, should be eliminated from the national forests."

The term, "agricultural," in the above statement is, by context, used in the limited sense of applying only to farm lands and farming not including forestry and the management of wild lands.

In 1911, similar concerns, coupled with severe floods in the Eastern United States, led to another major change in public land policy. The Weeks Act of March 1, 1911, authorized and directed the Secretary of Agriculture to examine, locate, and recommend for purchase such forest, cut-over or denuded lands within the watersheds of navigable streams as in his judgment may be necessary to the regulation of the flow of navigable streams or (as amended in 1924) for the production of timber. Before any acquisition could take place, individual States had to consent to the acquisition. While the Weeks Act does not specifically mention the classes of lands to be acquired, it does refer back to the Act of March 3, 1891, so that by inference, the general classes of land authorized for purchase were specified in the Creative Act of 1891.

However, unlike the reserves, where it was a matter of selecting from remaining public lands, choice existed in the acquisitions under the Weeks Act. After identifying those lands which met the 1910 criteria, it most often was decided not to acquire those lands which had higher value because of their location on lakes, streams, or roads. In essence, priority was given to land with the lowest value. All acquisitions were from lands offered by willing sellers.

By 1923, National Forests were established in the southern Appalachian Mountains and the White Mountains of New Hampshire. There was a total of 146 National Forests embracing 182 million acres of which about 86 percent was public land. Of this, 1,613,845 acres were acquired lands purchased under the authority of the Weeks Act. At that time, 161 million acres of the present 190 million acres were in the system.

At the time of the 1910 policy statement, it generally was believed that the range lands as well as farming lands should and could be passed into private ownership. Passage of the Taylor Grazing Act of June 28, 1934, constituted congressional recognition of the desirability of public management for the range lands as well as the wooded public domain. Section 13 of the act authorized the President to place under National Forest administration, in any State where National Forests may be created or enlarged by Executive Order, any unappropriated public lands lying within watersheds forming a part of the National Forest which, in his opinion, should best be administered in connection with existing National Forests. This provision constituted congressional recognition that in the management of "wild" lands, administrative considerations rather than arbitrary classification (such as wooded and not wooded) should form the major basis for placing lands under the jurisdiction of a given agency.

Up to this time, establishment of National Forests and the addition of land thereto were motivated primarily by resource protection and conservation concerns. Although there were long-term social and economic implications, they were not the primary consideration.

This changed significantly during the depression years of the 1930's. The Act of March 31, 1933, appropriated funds for the dual purpose of relieving employment and promoting conservation of natural resources. Under this program the Civilian Conservation Corp was established and funds were appropriated for acquisition of lands on which CCC enrollees could work on conservation projects.

In 1935, the resettlement administration was established by Executive Order, and a program of acquiring sub-marginal farmlands and resettling families from those lands was initiated. Under the authority of Title III of the Bankhead-Jones Farm Tenant Act of July 22, 1937, some 11 million acres of land previously used for agricultural purposes were acquired. The act directed the Secretary of Agriculture to establish a program of conservation for these acquired lands. This requirement was met by incorporating some 1.7 million acres into the National Forest. An additional 3.8 million acres were incorporated into the National Grasslands in 1966.

As a result of these programs, new National Forests were established in the Midwest, the Lake States, and the Coastal Plains of the South. There were also some additions to National Forests in Western States. The several acquisition programs were curtailed by the advent of World War II. At that time, there were 160 National Forests with net acreage of 177 million acres.

The acquisition plans on many of the new units were far from complete and the ownership within National Forest boundaries had declined to 78 percent.

Essentially, this completed the establishment era. Only one major new unit has been established since 1941. In 1965, the Redbird Purchase Unit in eastern Kentucky was established to acquire lands not only for the purposes of National Forest management but to help improve conditions in the economically depressed areas of eastern Kentucky. The Redbird Unit was proposed at a White House conference in 1963 and was one of the major considerations in the conference which eventually led to the formation of the Appalachian Regional Commission. The project has been funded with appropriations under the Weeks Act and now has 142,000 acres.

In their book, The Lands Nobody Wanted, Bill Shands and Robert Healy described, in much more detail, how the Eastern National Forests came into being. Their title is descriptive of National Forest lands in both the Eastern and Western United States. In the West, the reserve lands were those that homesteaders had by-passed. In the East, they were lands that had been over-utilized and abandoned. The acquisition teams in the 1930's continued to follow the policies established in 1910. The result was unconsolidated ownership patterns with public lands generally the backlands. Lands along highways and adjacent to rivers and lakes were not acquired and were retained in private ownership. This was particularly true in the highly populated Eastern United States.

Congress recognized the need to deal with the problem of scattered ownership in the 1920's. In 1922, the General Exchange Act authorized the Forest Service to use land exchange as a method of consolidating ownership of lands reserved from the public domain. In 1925, the Weeks Act was amended to provide for exchange of acquired lands. To date, the Forest Service has disposed of 3 million acres by exchange.

In 1960, Congress directed in the Multiple Use-Sustained Yield Act that National Forest lands, although acquired for purposes of watershed protection and timber production, would be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. However, no authority or program existed to acquire lands specifically for the additional management purposes.

Because of the acquisition priorities followed, the National Forests were extremely deficient in lands suitable for intensive outdoor recreation use as was the Eastern United States, in general. In 1965, passage of the Land and Water Conservation Fund Act provided a program for dealing with this deficiency. At that time, the Forest Service estimated that acquisition of 4 million acres would round out the system. To date, 1,050,910 million acres have been acquired, much of it in a number of special projects such as Wild and Scenic Rivers and National Recreation Areas. In 1978, Congress authorized use of L&WCF fund monies to acquire land for wildlife management purposes. However, since the Weeks Act remains the basic acquisition authority, any lands acquired also must be suitable for watershed protection and timber production.

During the establishment period, other national land management and protection programs also were developing. Over the years, millions of acres have been removed from the National Forests and incorporated in the National Parks, National Monuments, Indian Reservations, and other programs. The present 190 million acres of National Forest System land are probably the maximum and will likely decline since there are still a large number of Alaska Native Claim conveyances to be accomplished.

POLICIES AND CRITERIA FOR LAND MANAGEMENT AND LANDOWNERSHIP ADJUSTMENT

A basic Forest Service goal is to achieve the pattern of resource uses that best will meet the needs of the American people now and in the future. The major objectives of the landownership adjustment program in support of this goal are found in the Forest Service Manual:

a. Through purchase, exchange and other authorized real property actions, the ownership of public lands in the National Forest System will be adjusted so that resource development and use activities will be more effective in protecting and improving land and resource quality and productivity.

b. Identify and act on opportunities to add to, or eliminate, areas from the National Forest System to insure optimum land use and to promote practices to protect and enhance environmental quality in the management on all National Forest lands.

c. Dispose of isolated tracts, scattered parcels, and other lands which land management planning has shown can be conveyed properly to State, other government, or private ownership.

d. Acquire lands and interest in land, including rights-of-way, as necessary to provide for administration and management.

e. Settle land claims equitably.

Pursuant to section 6 of the National Forest Management Act, the decision relating to how best to meet these objectives will be reflected in individual National Forest management plans. These plans must be coordinated with State and local planning efforts. Such plans are being developed now on each National Forest.

This planning effort is probably the most difficult task ever undertaken by public land managers. It requires specific identification of management objectives for each National Forest and identification of landownership adjustments necessary to help reach these objectives. Planners, in developing National Forest management objectives, must consider many factors, including but not limited to:

1. Congressional direction for specific areas.
2. Capability of the land.
3. Desires and concerns of the public.
4. Public demands for various products and services.
5. Limitations imposed by State enabling legislation and/or other limitations.
6. Consistency with plans of State and local planning bodies.

Providing the landownership patterns optimum to obtain management objectives is also a complex and difficult task. While we are certain that all the lands within the National Forest are suitable for inclusion under the various congressional acquisition and reservation requirements, we estimate that some 15 percent are not fully contributing to obtainment of management objectives.

This is due to several longstanding difficulties: (1) most of the property lines are not identified; (2) there is no existing access to many lands; (3) some lands are simply too small to efficiently manage; and, (4) some tracts are encroached upon, have been engulfed in community expansions, or have title deficiencies which limit their utility. At the same time, acquisition of certain lands may be needed to improve management and resource development.

There are no explicit rules or guidelines for determining the optimum size of a National Forest or the minimum size of a tract which can be managed efficiently. In a State such as Indiana, which has very little public land, a small forest of 200,000 acres may be quite efficient because of the high amount of public use. Because of the high timber growth rate, it also may be efficient to manage tracts as small as 40 acres in the Southeast United States. Such concerns are now being dealt with by planners on individual National Forests.

When completed, each forest plan will include specific guidelines for landownership adjustments (purchase, donation, exchange, right-of-way acquisition, other partial interest acquisition transfers, and interchanges). These guidelines will reflect the resource and management needs and opportunities of the particular National Forest System unit. Under the existing regulations, the following considerations will be reflected in the planning process that develops the guidelines:

1. Landownership needs to meet resource goals and objectives.

2. Landownership patterns that limit resource management, protection and use of National Forest System lands.

3. Opportunities to meet identified public needs for goods and services.

4. Protection and enhancement of the environment.

5. Administrative efficiency.

6. Landownership adjustment needed to meet community or other special needs when in the public interest.

7. Alternative protection and management strategies.

8. Achieving a balance of resource uses from both public and private lands to best meet present and future national needs.

9. Coordination with other Federal Agencies, State and local governments, and, to the extent feasible, nonfederal owners.

10. Input from the public participation process.

11. Legislative mandates.

12. Policies of the Department of Agriculture and the Forest Service relating to individual landownership functions.

Mr. Chairman, I again appreciate this opportunity to come before your committee to provide this summary of criteria relating to protection and management of National Forest System lands. There are literally hundreds of laws relating to this subject and I have touched on only a few. Regretfully, I have had to describe the criteria in quite general terms. Specific guidelines, reflecting the circumstances unique to each National Forest System unit, are now being developed as part of the land management planning process. The Forest Service will be pleased to provide information about any specific area which the committee may desire.

Mr. REILLY. Thank you, Mr. Hull. Mr. Fowler Sims, acting chief of the Resources Management Branch, Directorate of Civil Works, Office of Chief of Engineers.

STATEMENT OF FOWLER V. SIMS, ACTING CHIEF, NATURAL RESOURCES MANAGEMENT BRANCH, DIRECTOR OF CIVIL WORKS, OFFICE OF CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY

Mr. SIMS. It is a pleasure to be here. This morning I will discuss the Corps of Engineers' program relative to pertinent authorities for the need, use and disposal of land at corps civil works projects and the interaction with Federal, State, and local interests.

The basic legislation which governs the conduct of the civil works program of the Department of the Army consists of numerous separate enactments of the Congress dating from 1824. The legislation for this program is prepared and considered largely in the House Committee on Public Works and Transportation, and the Senate Committee on Environment and Public Works.

The U.S. Army Corps of Engineers in connection with the operation and maintenance of 1,240 civil works projects and installations administers approximately 12 million acres of lands which includes 7,600,000 acres in fee and the remainder is in the public domain, easements, permits and licenses, and leased land.

Real estate requirements for multipurpose and single purpose projects are based upon engineering and operational plans and the application of good real estate practices. The size of the project depends on authorized project purposes such as flood control, navigation, hydropower, water supply, and irrigation. Other project features such as recreation, fish and wildlife enhancement, and mitigation may require additional land beyond project water storage needs.

The corps acquisition policy has evolved through four basic phases. Prior to 1953 lands for civil works projects were acquired on the basis of a rule-of-thumb policy on a project-by-project basis.

The first Joint Department of Interior and Army policy relative to the acquisition of land was adopted in 1953 and it provided for fee acquisition of a 300-foot block out of the conservation pool or fee acquisition to the 5-year flood frequency at agency discretion.

The Army chose to apply the 5-year frequency in all cases. The corps implementation of this policy was criticized by the House Committee on Government Operations for not permitting efficient or full protection and development of recreation, scenic, and fish and wildlife resources.

Consequently, the 1962 policy was developed. This policy provided for acquisition in fee to a 300-foot block-out of the flood control pool or to the maximum flowage line, whichever was greater. This provided for lands to meet present and future requirements as authorized by Congress for outdoor recreation and fish and wildlife enhancement.

In 1971, the Army revised its policy to provide uniformity with the Department of the Interior. The revision provided that fee be acquired to the greater of 300 feet horizontally from the top of the conservation pool or the top of the maximum flowage line. This 300-foot buffer zone was selected by both the Departments of the

Army and Interior as the minimum land area generally needed for realization of resource management.

Lands acquired for water resource projects are managed to accommodate authorized project purposes in accordance with master plans developed for each project. For management purposes these lands are allocated into use categories. Allocations include project operations, recreation-intensive use, recreation-low density use, natural areas, wildlife management, forest or range management, and separable recreation lands.

The policy of the Corps of Engineers, over the years, is to make lands available to Federal, State, local, and private entities to manage for use by the general public. For example, project lands are interchanged with other Federal agencies to reduce and improve management.

As an example the Department of the Army and the Department of Agriculture have entered into an agreement to cooperate in the planning, development, and management of corps water resource projects associated with the National Forest System.

Memoranda of understanding are entered into on such projects to facilitate management and an interchange of lands is accomplished to carry out the agreed-on responsibilities of each agency. A similar agreement has been developed with the Department of the Interior.

Project lands are made available by lease to non-Federal interests for park and recreation purposes under the general authority of section 4 of the 1944 Flood Control Act, as amended. Lands are also licensed to non-Federal interests for fish and wildlife management under this authority.

In addition to making lands available to non-Federal political entities for park and recreation and fish and wildlife purposes, lands are also leased to the private sector to provide services to the visiting public. These services include marina facilities, overnight accommodations, and related recreation activities.

Since the 1965 enactment of the Federal Water Project Recreation Act, recreation and fish and wildlife enhancement have been given full consideration in the planning of water resources projects. Cost sharing is required on the part of the non-Federal interests for the development of recreation or fish and wildlife enhancement aspects at water resource projects authorized after 1965.

As part of the corps natural resource management responsibilities, rules and regulations were promulgated to govern the use of project lands and waters by the general public. These rules and regulations are to insure that the lands are managed to the degree necessary so that the lands continue to be available for use by the general public now and in the future.

An inherent aspect in the acquisition and management of real property is its eventual disposal.

Since the early 1950's the Department of the Army has had a program for the yearly review of its civil works real property to determine if the lands and improvements are utilized efficiently for approved uses and in the best interests of the public.

Utilization inspections are conducted in light of all of the project's congressionally authorized purposes, including those of recreational development and fish and wildlife management.

Additional review of civil works lands has resulted from policies enunciated in a series of Executive orders commencing in 1970 with Executive Order 11508 to the present day Executive Order 12348 dated February 25,

These Executive orders have as their basic theme the review and identification of real property holdings which are not utilized, underutilized or not being put to optimum use. Procedures for identifying unneeded Federal real property have been established by the General Services Administration.

The Federal Property and Administrative Services Act of 1949 provides the statutory authority through which most Federal real property holdings are disposed. Generally, property which is determined excess to project needs is reported to the General Services Administration for utilization by other executive agencies having a requirement for such property or for disposal as surplus property.

Thank you.

[The prepared statement of Mr. Sims follows:]

ACQUISITION MANAGEMENT AND DISPOSAL
OF CIVIL WORKS LANDS
U.S. ARMY
CORPS OF ENGINEERS

I am Fowler V. Sims, Acting Chief, Natural Resources Management Branch, Directorate of Civil Works, Office, Chief of Engineers, Department of the Army.

I will discuss the Corps of Engineers' program relative to pertinent authorities for the need, use and disposal of land at Corps Civil Works projects, and the interaction with Federal, state and local interests as well as the private sector.

BACKGROUND

The basic legislation which governs the conduct of the Civil Works program of the Department of the Army consists of numerous separate enactments of the Congress dating from 1824. The legislation for this program of water resources development is prepared and considered largely in the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works.

The U.S. Army Corps of Engineers, in connection with the operation and maintenance of 1,240 civil works projects and installations, administers approximately 12,000,000 acres of lands which includes 7,600,000 acres in fee; 650,000 acres of public domain; 3,000,000 acres of easement; 450,000 acres in permits and licenses; and 19,000 acres of leased land.

Real estate requirements for multi-purpose and single purpose projects are based upon engineering and operational plans and the application of good real estate practices. The size of the project depends on authorized project purposes such as flood control, navigation, hydropower, water supply, and irrigation. Other project features such as recreation, fish and wildlife enhancement and mitigation may require additional land beyond project water storage needs.

LAND ACQUISITION POLICY

The Corps acquisition policy has evolved through four basic phases. Prior to 1953, lands for civil works projects were acquired on the basis of a "rule of thumb" policy on a project by project basis.

The first Joint Department of Interior and Army policy relative to the acquisition of land was adopted in 1953 and is generally referred to as the Eisenhower Policy. It provided for fee acquisition of a 300-foot block-out of the conservation pool, or fee acquisition to the five-year flood frequency, at agency discretion. The Army chose to apply the five-year frequency in all cases. The Corps implementation of this policy was criticized by the House Committee on Government Operations for not permitting efficient or full protection and development of recreation, scenic and fish and wildlife resources.

Consequently, the 1962 policy was developed. This policy provided for acquisition in fee to a 300-foot block-out of the flood control pool or to the maximum flowage line, whichever was greater. This provided for lands to meet present and future requirements as authorized by Congress for outdoor recreation and fish and wildlife enhancement.

In 1971, the Army revised its policy to provide uniformity with the Department of Interior. The revision provided that fee be acquired to the greater of 300 feet horizontally from the top of the conservation pool or the top of the maximum flowage line. This 300 foot "buffer zone" was selected by both the Departments of the Army and Interior as the minimum land area generally needed for realization of resource management.

LAND MANAGEMENT

Lands acquired for water resource projects are managed to accommodate authorized project purposes in accordance with master plans developed for each project. For management purposes these lands are allocated into use categories. Allocations include project operations, recreation-intensive use, recreation-low density use, natural areas, wildlife management, forest or range management, and separable recreation lands.

The policy of the Corps of Engineers over the years is to make lands available to Federal, state, local and private entities to manage for use by the general public. For instance, project lands are interchanged with other Federal agencies to reduce and improve management. As an example, the Department of the Army and the Department of Agriculture have entered into an agreement to cooperate in the planning, development, and management of Corps water resource projects associated with the National Forest System. Memoranda of Understanding are entered into on such projects to facilitate management and an interchange of lands is accomplished to carry out the agreed-on responsibilities of each agency. A similar agreement has been developed with the Department of Interior.

Project lands are made available by lease to non-Federal interests for park and recreation purposes under the general authority of Section 4 of the 1944 Flood Control Act, as amended (16 U.S.C. 460d). Lands are also licensed to non-Federal interests for fish and wildlife management under this authority. In addition to making lands available to non-Federal political entities for park and recreation and fish and wildlife purposes, lands are also leased to the private sector to provide services to the visiting public. These services include marina facilities, overnight accommodations and related recreation activities. Since the 1965 enactment of the Federal Water Project Recreation Act (P.L. 89-72), recreation and fish and wildlife enhancement have been given full consideration in the planning of water resources projects. Cost sharing is required on the part of the non-Federal interests for the development of recreation or fish and wildlife enhancement aspects at water resource projects authorized after 1965. As part of the Corps' natural resource management responsibilities, rules and regulations were promulgated to govern the use of project lands and waters by the general public. These rules and regulations are to insure that the lands are managed to the degree necessary so that the lands continue to be available for use by the general public now and in the future.

LAND DISPOSAL

An inherent aspect in the acquisition and management of real property is its eventual disposal. Just how does the Corps decide what real property is excess to its needs and what can be disposed?

Since the early 1950's the Department of the Army has had a program for the yearly review of its civil works real property to determine if the lands and improvements are utilized efficiently for approved uses and in the best interests of the public. Utilization inspections are conducted in light of all of the project's congressionally-authorized purposes, including those of recreational development and fish and wildlife management.

Additional review of civil works lands has resulted from policies enunciated in a series of Executive Orders commencing in 1970 with Executive Order 11508 to the present day Executive Order 12348, dated 25 February 1982. These Executive Orders have as their basic theme the review and identification of real property holdings which are not utilized, underutilized, or not being put to optimum use. Procedures for identifying unneeded Federal real property have been established by the General Services Administration.

The Federal Property and Administrative Services Act of 1949 provides the statutory authority through which most Federal real property holdings are disposed. Generally, property which is determined excess to project needs is reported to the General Services Administration for utilization by other executive agencies having a requirement for such property or for disposal as surplus property.

Mr. REILLY. Thank you, Mr. Sims. We turn now to Mr. Lloyd Irland, State economist from Maine.

STATEMENT OF LLOYD C. IRLAND, STATE ECONOMIST, STATE OF MAINE

Mr. IRLAND. Thank you. It is a great pleasure to be with you, both to learn from these gentlemen next to me and also to see that Senator Wallop and his people planning these things feel that the States have something to contribute.

I am here today to tell you about what I will call the 97-million-acre challenge, the management of State-owned public lands for the future. That 97 million is a very rough figure and does not include Alaska which has as an option up to 100 million acres. So the State of Alaska, when its business is complete, will be owning as much land as a State as all of the other 49 States put together.

My thoughts on this come from my own tenure with the Maine Bureau of Public Lands and discussions with a number of public land administrators in several States.

It is impossible to learn of, or describe to you, the rich detail of 50 different State land programs. So, what I will do is summarize the broad trends as I see them. I think that we can say that the States are becoming what they were intended to be in our Federal system, conscientious resource managers performing as a nation-wide laboratory for testing new ideas.

The States and their subdivisions own nearly 140 million acres of land ranging from remote islands to pine woodlots to sagebrush desert. Some of that land included in that figure is in military installations, highways, and other general government uses.

Of these 97 million acres, not counting Alaska, New Mexico owns about 10 percent of the total. Others with especially large endowments of public land include Arizona, Montana, Utah, Minnesota, Michigan, New York, Washington, Wyoming, Colorado, and Pennsylvania.

The sources of these land systems are diverse, including more than 200 million acres that survive or 200 million acres that did not survive originally granted by the Federal Government. More than 20 million acres, it seems, have been returned to States and counties by tax delinquencies, reservations made by the States of their own lands gifts and purchases.

My prepared remarks contain further detail that may be of interest.

There is undoubtedly truth in the assertion that State management programs have left a good deal to be desired in the past. Low management intensity, inadequate supervision of users, overuse, excessive allocations, narrow minority user groups were all too common.

But the cry of certain groups that transfers to States are preambles to sellouts, the figures, et cetera, are just not a fair characterization. More than a few States have wilderness systems on their lands. Some are outdoing the Federal Government in programs in natural area conservation, wildlife, and interpretation of these resources.

I think that the central contribution of the State land systems is the concept of trusteeship. This concept has its greatest force and development in this country at the State level, while, in fact, in law it is not a central concept at the Federal level. It is a striking fact that most of the leading court decisions defining public trust law are stated and decided in State courts.

The concept of trusteeship involves four things. It involves the corpus of the trust, the lands and their resources; the benefits of the trust, revenues therefrom, and the benefits or uses of those lands; it involves the beneficiaries; and it involves the trustee, ultimately the State as sovereign as represented by the legislature, and normally acting through a designated administrative officer. Trust lands are held as attributes of sovereignty and not of mere proprietorship.

Many of the States are now undertaking, for the first time, efforts to develop planned land systems. We have all seen the horror story checkerboard maps which are usually drawn from the Federal perspective. Of course, they have their mirror images in the land systems acquired, such as in the Western States, but which exist all over the Eastern States as well.

When I assumed my duties at public lands, I talked with one of the staff people there who said that in 15 years of working in the public lands that he had not been able to get on all of the lots that we had. There are lots scattered all over the place, including some of the common land divided cotenancies that were on located areas.

So I have managed these kinds of lands and know what the headaches are. We are now entering an era in which State lands administrators, and even Governors, are perceiving the losses of revenues and public benefits that are attributable to fragmented public land ownership.

So, we see the State of Utah working with the Federal Government on a massive land exchange proposal, which I understand you will learn more about in the workshops. The State of Alaska, of course, is unique in its capacity to create a planned land system. There are several States with massive and aggressive acquisition programs underway, sometimes emphasizing protection of natural areas and game and wildlife habitat. In those cases there is a time when funding is separate from the traditional resource agencies.

In Maine we are in the process of working through a major land exchange with a number of private landowners in order to block up a planned land system. I am not sure that there is anything very surprising about the kind of criteria that are employed by States in developing of these planned land systems.

Some of them address urban requirements or things like shopping centers, condominiums. It depends on where their land is. Most of them deal with boundary assessments in the classic manner. Most of them address natural and recreational benefits. And almost all of them require varying degrees of complexity in terms of disposal.

The requirement for professional appraisals before exchange can be completed is another characteristic of State land management. I think it is a significant boost in the intensity of management. We are seeing a thorough, professional inventory being carried and we are seeing increases in the levels of timber harvesting and in the levels of management of noncommodity resources.

So, State land management has been in a period of real excitement and change and professionalism and it has been able to participate in what, I think, objective observers feel is the general upgrading of professionalism and management capability in State governments across the country.

In order to really meet the promise of the 97-million-acre challenge, there are several major needs. First of all, there will have to be responsible and equitable funding programs. There will have to be more systemwide thinking across the bureaucratic lines. Only a few States can afford the kind of administrative Balkanization and dilution of effort we now have as a result of all of these specialized agencies with their own constituency and their own funding sources and continual and professional lack of comparability and bickering.

I view this in Maine and, while I see different signs of that beginning to develop at the Federal level, there really is not a systemwide thinking about a Federal land system all as one unit. I am not sure we are any distance ahead of that in any of the States that I am acquainted with.

We are going to have to see continual development of the concept and application of trusteeship as the guiding principle for the long-run protection of the people's birthright of land. And finally, a new rationale and mission appropriate to the needs and character of each State will have to be developed for public land ownership and management.

To meet this 97-million-acre challenge will require that we enlist the support of Governors and legislators for a new mission for State land agencies. Otherwise our programs will wither once again as they have in the past when newly emerging needs pass us by. Thank you.

[The prepared statement of Mr. Irland follows:]

THE 97-MILLION ACRE CHALLENGE: STATE PUBLIC LAND PROGRAMS IN THE 1980's

Remarks by Lloyd C. Irland*

Workshop on Land Protection and Management
Subcommittee on Public Lands and Reserved Water
U.S. Senate Committee on Energy and Natural Resources

Washington, D.C.

June 14, 1982

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I am here today to tell you about what I will call the 97-million acre challenge - the management of state-owned public lands for the future. This is a field of rapid change and excitement, which is at the highest pitch since state land systems went through their early formation and acquisition. The old "land office business" of the past has changed from one of speedy sale to one of sound conservation, management and development.

It is impossible to learn of, or describe to you, the rich detail of 50 state land programs. Today, I will summarize the major trends as I see them. What I see, in sum, is that the states are becoming what they were intended to be in our federal system: conscientious resource managers performing as a nationwide laboratory for testing new ideas. One major area, of growing importance, that I cannot address today, is state administration of submerged lands.

State land systems are attracting public, administrative, and political attention today. In several states, governors have identified themselves with major state land initiatives. In Maine, with well under a million acres of state-owned lands of all kinds, each session of the Legislature has faced a long list of bills on public land issues each year since 1973. Why this upsurge of interest?

First, states have awakened to the opportunities for revenue and public benefit represented by their lands, and to the public benefits of acquisition efforts. This awakening has been encouraged by new discoveries of minerals and by rising commodity prices. Changing times are generating conflict between different constituencies -- conservation groups, lessees, local governments -- that have stakes in land management. Finally, the environmental consciousness of the 70's generated public and legislative impatience with past management, which in some states was dominated by penny-pinching conservatism and strongly oriented toward narrow user groups.

The sheer diversity of this subject means that generalizations must be spoken -- and heard -- with caution. There may be some states which inherited checkerboard land grants and continue to ignore them, while others have laboriously assembled fine systems of parks, forests, watershed, and gamelands by acquisition. Some states lease private land for public purposes, while many lease public lands to individuals for private purposes. Several have highly professional land management organizations which include inventory staffs and research units. There may remain a few whose principal objective is to minimize staff and spending.

THE LAND AND ITS HISTORY

States and their subdivisions own nearly 140 million acres of land, ranging from remote islands to pine woodlots to sagebrush desert. The wildland which concerns us here amounts to about 80 million acres. Much of the balance is devoted to National Guard installations, highways, and the other workaday tasks of government.

The 97 million acres owned by the states (other than Alaska) account for 4.2% of the nation's land. This relatively small percentage, the lack of past activity, and the division among 50 states may account for the dearth of published information on these lands and their problems.

New Mexico leads the lower 48 in state land ownership, holding more than 10% of the national total, outside of Alaska. Others with especially large endowments of state land include Arizona, Montana, Utah, Minnesota, Michigan, New York, Washington, Wyoming, Colorado, and Pennsylvania. Alaska, when its selections are complete, will have more than all the others put together.

The states acquired most of their land by historical happenstance and by indirection. As the nation was created, the 13 original colonies retained ungranted land within their borders and made large cessions to the new federal government. To pay war debts, raise revenue, and promote settlement and development, these original states disposed of all but a fraction of their original domain, including western lands later granted to them. As I have said for Maine, its most successful public land policy was to get rid of it. Through the 1960's, states received 228 million acres of additional federal grants (not counting Alaska).

Since nationhood, the states disposed of about a third of a billion acres of land, mostly to private parties. Since the turn of this century, western states have retained much of their land, while eastern states have added millions of acres through various acquisition programs. For example, in the 1930's, eastern states and counties acquired 10-20 million acres through tax delinquency, some of which has since been sold. Since 1965, states and their subdivisions have acquired almost 2 million acres with the assistance of LAWCON funds and sizable additional acreages through bond issues (more than $4 billion since 1965), general fund, and dedicated revenues. Small areas were acquired by donations, mostly for parks.

As a result of this checkered history, few state land systems resulted from any planning process. In the few cases where such a process was followed, some or all of the original goals have been fulfilled or are obsolete. The process of planning and selection now under way in Alaska is unprecedented in this respect. State officials in one swoop will be able to plan a land system based on carefully developed goals and relatively good knowledge of the resources involved.

Due to terms of federal grants, and later legislative provisions, many state land systems have all or part of their revenues dedicated in trust to schools or other public purposes. Administratively, state land systems are typically balkanized into separate agencies serving particular constituencies -- forestry, parks, wildlife. Even where super-agencies have consolidated the old specialized agencies, there is little true integration of land acquisition, planning, and management.

There is undoubtedly truth in the assertion that the management programs of many states leave a good bit to be desired. In the past, low management intensity, inadequate supervision of users, overuse, and excessive allocations to narrow minority user groups were all too common. But the cry by certain groups that transfers to states are preambles to sellouts to diggers, choppers, and pavers, is just not a fair general characterization. More than a few states have small wilderness systems on their lands; some are outdoing the federal government in natural area conservation, nongame wildlife, and interpretation work.

In matters of land acquisition, disposal, and exchange, the level of decision-making control varies, but in most cases, the Governor or Legislature must authorize transactions of more than nominal size. In New York's Forest Preserve lands in the Adirondack Park, such transactions must be approved by statewide referendum.

TRUSTEESHIP

A central concept of public land stewardship is that of trusteeship. This concept has its greatest force and development in this country at the state level, while it is not a central concept at the federal level. It is a striking fact that most of the leading court decisions defining public trust law are state issues decided in state courts. The concept of trusteeship deals with several classes of resources:

- trust lands granted for particular purposes by the federal government, e.g. section 16 and 32 lands;
- trust lands held by virtue of sovereignty, as in state-owned subtidal lands;
- Land placed in trust by legislative action -- New York's Adirondack Park; Maine's Baxter Park (a private gift);
- lands reserved for particular public purposes in state constitutions or otherwise (Vermont's "glebe" lands; Maine's public reserved lands.

The concept of trusteeship involves four things: the corpus of the trust (the lands and their resources); the benefits of the trust (revenues therefrom or beneficial uses thereof); the beneficiaries (designated school trust funds or "all of the people of..."); and, a trustee (ultimately the state as sovereign as represented by the Legislature normally acting through a designated administrative officer). Trust lands are held as attributes of sovereignty, not of mere proprietorship.

The practical applications of trusteeship include the detailed provisions for guarding clearly defined interests (usually monetary) of designated beneficiaries and restrictions on alienating the land. In many states, other government agencies or local governments, to their irritation, must pay for trust lands at market value in order to obtain title.

PLANNED LAND SYSTEMS

Perceiving the high costs of scattered land parcels and irrational boundaries, and the losses in revenue and public benefits, many states are embarking on major programs to rationalize their land systems. I can only note a few examples which have come to my attention:

- The State of Utah is developing a proposal for a two million acre land exchange with the Department of the Interior. This will be acted upon directly by the Congress. The objective is to create at one stroke a rational and manageable land system for the Stae. The Governor has made this effort a personal interest.
- The State of Alaska, of course, is unique in this respect. The State and native groups will receive federal lands containing boundless wealth and comprising an area exceeding the total holdings of the 49 other states. Most significant is the fact that the State has been an active participant in a selection process that has been able to employ a fairly sophisticated (though hardly complete) data base.
- Several states are continuing aggressive acquisition programs to block up holdings and protect significant conservation values. Also, there are programs seeking to preserve natural areas or nongame wildlife, whose funding and administration may be outside of traditional land management agencies. Though federal land acquisition funds are faltering, some states are carrying on with their own funds.
- In Maine, a large land trade is underway with private landowners to create a significant addition to the state's system of multiple-use

lands. General criteria for this process were developed using public involvement last winter. This effort will involve several owners at once, and follows a series of previous trades with private parties, which totalled more than 250,000 acres.

There are-undoubtedly other examples. These are apart from the year-to-year boundary adjustments and small swaps undertaken universally to meet local needs. These efforts reflect clear, systemwide thinking about land systems.

Despite these exciting examples, however, there is on the whole little evidence of systemwide thinking in state land management. Each single-purpose agency (fish, game, parks, forests, natural areas, water management) may have its own narrow acquisition and land adjustment plans, but in few cases are they truly considered on a systemwide basis. This of course, closely mirrors the federal experience (Land Policy Groups, et. al. not withstanding).

BOOSTING MANAGEMENT INTENSITY

Stronger markets for resource products, improved funding, and administrative improvements enabled many states to significantly upgrade the intensity of management in the 1970's. This involved an array of programs:

- land acquisition, including from the federal government;
- resource inventory;
- park, roads, and other facility development;
- leases and transfers to users or other public agencies;
- land exchanges;
- increased numbers of professional managers in the field;
- increased sales and leasing of timber, minerals, and other resources.

Some examples of increased management intensity arose from the creation of new economic resources during the upsurge in oil prices. These include occurrences of peat, lignite, oil, and gas that were formerly subeconomic. Also, battalions of weekend wood cutters are pilfering (occasionally buying) pinon juniper or hardwood firewood; while new plants seek contracts for whole-tree chips for producing steam or methanol. State lands played an increasing role in meeting recreation needs. In some states, needs for urban, resort, or other development accounted for increasing pressure.

As all of these developments progressed, many state agencies were swept up in executive branch reorganizations. In some cases, they (and their constituents) found their access to the Chief Executive diminished and saw their priorities take second place behind newer and better-funded ones. During this period as well, significant progress was made in many states in improving the technical calibre of staff, upgrading managerial competence, broadening the values considered in decisions, and strengthening resource planning.

In some states, funding for land management remains a serious concern. The patchwork of federal, dedicated revenue, and general fund sources of the past is coming apart, torn between inflation, rising expectations, and shrinking federal funds. These funding problems are also seen in rising tensions with local governments over tax base erosion and payments-in-lieu-of taxes. Most states have one scheme or another for sharing their public land revenue with municipalities.

IN CONCLUSION: MEETING THE 97-MILLION ACRE CHALLENGE

I think you will agree that meeting the 97-million acre challenge will be important to Americans. Many of these acres are closer to the people geographically and politically than are the federal lands. They contain commodity resources and public values on a grand scale. The groundwork for meeting the challenge -- administrative, resource information, and planning -- is being laid.

Several major needs will have to be met:

- Responsible and equitable funding regimes will be needed, capable of meeting long-run needs;
- Systemwide thinking, across bureaucratic lines, is needed. Only a few states can afford the administrative balkanization and dilution of effort that they now tolerate in fragmented land management efforts. On the present basis, developing consolidated plans for public land acquisition, disposal, and exchange, is extremely difficult even when attempted.
- Continued improvement in public participation and in intergovernmental relationships.
- Continued development of the concept and application of trusteeship as a guiding principle for the long-run protection of the people's birthright of land.
- Finally, a new rationale and mission, appropriate to the needs and character of each state, will have to be developed for public land ownership and management. The rationales of the Statehood Acts, of the land acquisition programs of the 1930's, have lost their force. To meet the 97 million acre challenge will require that we enlist the support of governors and legislators for a new mission for state land agencies. Otherwise, our programs will wither once again, as they have in the past when newly emerging needs passed us by.

TABLE 1

Major Uses of State and Other Nonfederal Public Land

	Million Acres	%
Cropland	2	1.5
Grass, pasture and range	41	30.1
Forest	38	27.9
Special and other use	55	40.4
Total	136	99.9

Source: G. Wunderlick, Facts about U.S. Landownership. USDA, ESCS, Agr. Info. Bull. 422, Nov. 1978, p.5.

Note: Does not reflect Federal transfers to Alaska

TABLE 2

Federal Lands Granted to States, 1781 - 1966. (Million Acres)

Support of Common Schools	77.5
Reclamation of swampland	64.9
Railroad grants	37.1
Support of miscellaneous institutions and others	39.1
Canals, rivers, and wagon roads	9.5
	228.1

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[1] From D.D. Moyer, M. Harris, and M.B. Harmon, Land Tenure in the U.S., USDA-ERS Agr. Info. Bull. 338. June 1969, p.8.

The figures in One Third of the Nation's Land, which show grants by state, p. 244, differ slightly from these.

REFERENCE LIST

State public land administration is a poorly studied topic. The standard public lands histories largely ignore it. Bits and pieces can be found in forest history, in specialized volumes on individual states, and in U.S. Forest Service and USDI reports on national resource issues.

Advisory Commission Intergovernmental Relations. State and Local Roles in the Federal System. Washington. Report A-88. 1982. esp. ch.3.

Hurst, James Willard, The Legal History of the Wisconsin Lumber Industry. Cambridge: Harvard Univ. Press.

Patric, W.C., Trust Land Administration in the Western States. Denver: Public Lands Institute, 1981.

Public Land Law Review Commission. One Third of the Nation's Land. Washington: GPO, 1970.

Shands, W.E., Federal Resource Lands and Their Neighbors. Washington: Conservation Foundation. 1979.

U.S. Congress. Senate: Workshop on Public Land Acquisition and Alternatives. Comm. on Energy and Natural Resources. 97th Cong. 1st sess., Oct., 1981. Publ. 97-34

Widner, R. ed. Forests and Forestry in the American States. Washington: National Assn. of State Foresters n.d. (approx. 1968).

General Note: Someone should do an up-to-date inventory of lands owned by nonfederal public entities including state and local governments and special districts. It should report vegetative cover, special use restrictions, and the status of important items like water and mineral rights and "options" like outstanding in-lieu selections. Also, trust status of the land should be noted. Submerged lands should be included, under fresh or salt water.

I have located no source of total acreage data by state. The tabulation given in American Forest Products Industries, Government Land Acquisition (Washington, 1964), p. 23-4, shows a far lower total than more recent sources, and should not be relied upon. The HCRS Third Nationwide Outdoor Recreation Plan, Assessments, p. 74-5 uses data with the same total as AFPI, citing Public Land Statistics, 1977, as the source. These contrast with Wunderlich's figure of 97 million acres in Agr. Info. Bull. 422, p.5. The U.S. Forest Service national timber assessments and state reports give detailed data, but for forested lands only.

DRAFT JANUARY 1982

FORESTRY AND THE NEW FEDERALISM

NEW FORCES AND NEW OPTIONS

Western Forest Insect Work
Conference
March 1982

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Please do not quote without consulting
author. Comments are invited.

ABSTRACT

Total outlays for cooperative forestry programs, including fire control on private lands, insect and disease management, and the federal, state, and private forestry budget, were approximately $300 million in the late 1970's. Not all of these programs serve a clear federal interest and many will see their funding cut in the New Federalism of the early 1980's. I propose a realignment of functions, to be led by the State Foresters, that will enhance program effectiveness and reduce the current waste in administration of cooperative programs.

Federal-state fiscal relationships are in a state of unprecedented flux and uncertainty. Trends emerging in the late 1970's have been decisively pushed to the fore by the Reagan Administration's campaign for a "New Federalism". This "New Federalism" is an effort to return functions and resources to the states, to reduce the federal presence in a wide range of areas where traditional Republican sentiment holds that Uncle Sam has been too visible and influential. The New Federalism is also, to be sure, a product of the fact that federal grants to states are more "controllable", in budgeteer's parlance, than most of the federal budget. The National Governors Association (1981) expects that programs of interest to state and local governments will see their funding fall by 36.7% in real terms from FY 1980 to FY 1982, the current budget year.

As a result of this strikingly successful budget-cutting campaign, "sorting out", "revenue turnbacks", and "fiscal capacity" are very much in the forefront today in Washington and the state capitals (ACIR, 1981; Lincoln Institute, 1981; Beckman, 1981). One need not agree with the Administration on the merits or future prospects of the New Federalism, however, to see that it has profound implications for forestry. It also offers excellent leadership opportunities for state foresters prepared to take bold initiatives in a time of fiscal gloom.

In this essay I review how the current pattern of federalism in forestry developed, and why it should be scrapped. I outline a proposed New Federalism for Forestry and suggest a few of its advantages. Two potent areas of federal influence on forestry--tax and trade policy--are not discussed here.

Federalism in Forestry--Past Roots

Federalism in forestry goes back to the earliest days of planned forest policy in this country. Up to 1905, the principal federal role was research and technical assistance. The states had by then established a few tiny forestry agencies and forestry schools. Federalism was a non-issue.

As a result of the broad impact of the first Roosevelt administration on conservation policy, and supportive private organizations nationwide, the period up to the Great Depression saw a new pattern of federalism emerging. The federal government added significantly to its forest holdings by purchase, thus establishing a presence as a land manager in the East. More importantly, the cooperative Fire Protection (Weeks, Clarke-McNary) program was established to support state fire control efforts. The forest survey program was established and forestry education and research came into its own in most states.[1] State agencies built programs slowly but successfully. Their permanent staffs grew tenfold from a depression low of 1600 to almost 17,000 by 1978 (Datena, 1979).

The years from 1933 to the early 1950's saw the establishment of a nationwide system of soil conservation districts and a Forest Service effort consisting of expanded federal programs for small owners, including advice and subsidies for forest practices. One direct federal effort, the Yazoo-Little Tallahatchie Project in north-central Mississippi, did not spawn any progeny due to the grip of the SCS on direct landowner assistance. In this period the concept of working exclusively through the State Forester was established. During these years, several eastern states unwillingly became large-scale landowners as a result of tax delinquency. Many states added to their land systems for state forests, parks, and wildlife management areas. A long argument over public regulation of private forestry was fought and died out.

By the early 1970's, the pattern of federalism in forestry was clearly established. It was based on several basic concepts:

1. All Federal aid for forestry goes through State Foresters.
2. There is a federal responsibility to help pay for fire and insect and disease control on private land, including help for rural communities (RCFP).
3. The federal government has a responsibility to supply free technical advice and cost-sharing assistance to small private landowners.
4. The federal government will supply surplus military equipment at nominal cost to the states for fire control.
5. The federal government has a financial role in urban forestry, including management of gypsy moth and dutch elm disease.

Critics of Federal Cooperative Forestry Programs

Thus was established a basic pattern of states pushing local forestry responsibilities onto the federal taxpayer. This was made necessary by the political needs of the USFS to meet competition from other USDA agencies, to get a piece of the action in the rural-farm conservation subsidy pork-barrel. Another factor was the stinginess of state legislatures in funding conservation. Also, the agency needed a presence in states with no National Forests. For many years, this pattern was undisturbed. It formed the basis for an increasingly strong relationship between the State and Private Forestry branch, the State Foresters, and the National Association of State Foresters.

TABLE 1

Legislative Development - Federalism in Forestry

Forest Protection	
Weeks Act	1911
Clarke-McNary Act	1924
Cooperative Forest Pest Control Act	1947
Landowner Assistance	
Cooperative Forest Management Act	1950
Soil Conservation Act	1935
Soil Conservation and Domestic Allotment Act	1936
Rural Development Act of 1972 (RCFP)	
Forestry Incentives Program	1973
TVA - Yazoo - Little Tallahatchie	1930's
Research, Survey, and Education	
McSweeney-McNary Act	1928
Hatch Act (Agr. Experiment Stations)	1887
McIntire-Stennis Act	1962
Planning	
Resources Planning Act	1974-76
Legislative, Administrative	
USFS upgrades S&P functions	1970's
Recodification of Cooperative Forestry statutes	1978

As federal budgetmakers began probing for cost-cutting opportunities in the early 1970's, they noticed an anachronistic set of subsidies to rural landowning interests that seemed a promising area for economizing.[2] This was the web of federal payments to states promoting forestry. The budgeteers noticed a number of important facts:

1. The funds involved, while small in relation to the USDA budget, were worthy of attention. In 1978, $54 million was spent on USFS programs of assistance to state and private forestry, and an additional $24.7 million went for insect and disease management, much of which was used on private land.
2. It was unclear why most of these activities represented a federal responsibility. No one disputed the notion that trees should be planted, fires fought, or bugs controlled. But the rationale for a federal presence was unclear.
3. While these programs seemed to involve a great deal of activity nationwide, there were no clear indications that all of this activity had any effect in expanding current or future flows of output from the forests.
4. In the larger scheme of things, the immediate constituency for these programs had relatively little political clout when compared to other major groups in society benefitting from federal subsidies or transfer payments. Measured in votes, campaign contributions, and letter-writing pressure, the forestry community and forest industry were strictly bush-league.

Since then, Presidential budgets have repeatedly recommended reduced or "zeroed out" funding for these traditional state forestry programs.

The results have been predictable:

1. An accelerated effort to conduct "research" programs and "evaluations" designed to justify current programs and prepare rationales for expanded funding for these programs.
2. Extensive efforts to measure the economic "impact" of forest resources on local communities.
3. Aggressive attempts to create a new constituency for these programs, through nationwide conferences, publicity, and accelerated research.
4. Extensive waste of professional and administrative talent in the state agencies, the USFS, and the Congress in bickering over funding levels for these programs (Anon.,1981).
5. Extensive program redesign and renaming to try to address concerns.raised by the budgeteers.

Several events in the late 1970's added urgency to the debate. First, the Carter administration chose to de-emphasize timber output on the National Forests, and proposed a massive step-up in output from private nonindustrial lands to meet the future demand for timber. Though little was actually done to promote private timber output, a renewed interest in small owner problems was generated. Unfortunately, this shift occurred at a time when existing approaches to helping small private owners were receiving heavy criticism from the budget agencies.

Second, escalating costs for massive insect control operations on federal, state, and private lands led to congressional irritation with the massive subsidies and rising outlays. While pest control subsidy formulae were slightly doctored up, no basic policy changes were made in the 1978 recodification of the laws for forest research, pest control, and cooperative forestry. Carter administration officials announced a determination to cut back on these outlays, but they usually caved in to the intense political pressure by congressional delegations of the benefitting states.

How to Define a Federal Interest?

The history of intergovernmental relations since the 1930's can be described as a period during which many previously local or private tasks became federal missions. This means that there is no longer a clear definition of what constitutes a true Federal interest. A set of criteria for "justifying national action" was offered by the ACIR (Lincoln Institute, 1981, p. 63):

(a) When the National government is the only agency that can summon the resources needed for an activity . . .

(b) When the activity cannot be handled within the geographic limits of smaller governmental units, including those that could be created by compact.

(c) When the activity requires nationwide uniformity of policy that cannot be achieved by interstate action.

(d) When a state through action or inaction does injury to the people of other states.

(e) When states fail to respect or to protect basic political and civil rights . . .

No doubt there is room for argument about this list of criteria, and about how they might apply to cooperative forestry programs.

In my own judgment, the existing list of federally funded state programs meets none of these criteria.

This does not mean, of course, that there is not proper federal role in state and private forestry. I'll offer my own ideas below.

Innovation at State Level

During the 1970's, the states themselves were far from passive in the area of federalism. They continued their work in fire and pest management, and aid to small owners. Most states accomplished significant improvements in management programs and revenue yields from their state forest lands. By the mid 1970's, a large number of university forestry schools had attained college status and several had successfully initiated major cooperative research efforts with private industry. They upgraded technical aspects of their work, such as expertise in pest management and the use of aircraft in fire management. Spurred by increasing stringency in general fund budgets, they tightened up internal management. Assisted by funding provided under the RPA, many states undertook extensive programs of resource assessment, public involvement, and program planning (Rose, 1981; Webster and Olmstead, 1982).

Several states emerged as leaders in setting new direction for forestry programs. Florida established a wide-scale state and locally funded urban forestry program. The states of Washington, Oregon, and Idaho carried out, with federal financial help, a major program of assessing forest resource trends and forest policy. Many states reformed their systems of forest taxation, in the process involving leading foresters and forest economists as policy advisers (Meeks, 1982). Partly due to the stimulus provided by federal legislation, but largely on their own, several states (California, Washington, Oregon, Maine, New York), established complex systems for regulating private forest practice, largely to control water quality degradation. The states were clearly preparing to set out on their own courses, less dependent on federal agendas and federal technical help.

Most importantly, several states realized that they were going to have to take their own responsibility for timber supply. Private owners couldn't afford costly tree planting, and the federal manna was not going to rain out of the sky in response to Administration rhetoric about the importance of raising NIPF output. These states set out to establish serious forest improvement programs with their own revenue sources. In Virginia and Texas, combinations of state and private funds are used to help small owners reforest cutover land to pine. In California and Alaska, natural resource revenues are being dedicated to upgrading the productivity of all renewable resources on private and public land. Missouri has dedicated a fraction of a cent on its sales tax to conservation. These programs deserve our applause and emulation. They represent the first steps on the part of states toward halting their federal freeloading and assuming their own forestry responsibilities.

State Funding Squeezes

Many State Foresters justifiably doubt that they could get money from their legislatures to fill in behind federal cuts, much less to adopt new expanded programs. They face a challenge. The challenge is to develop the key ingredients for success:

1. New ideas for upgrading forest productivity that will work;
2. A constituency for those ideas;
3. Substantial industry and landowner financial contributions to any direct investments, so that they are not just asking for more public handouts.

The fiscal facts are clear. First, states rarely spend more than nominal General Fund sums on conservation. Several major forest states have made significant cuts already. Also, the budget problems are today, while the benefits of better forestry are a long way into the future. Finally, forest landowners are generally not poor people. Many are quite wealthy. When we are pruning people off the welfare rolls, some find it hard to justify government grants to rural landowners for forestry. Consider an owner with 100 acres. Even if the owner is an elderly lady on social security, she owns an asset worth at least $20,000.00. Are we to trim her Medicare allowances and still give her free forestry advice?

Where Do We Stand?

To summarize the situation as I see it, we face the following facts, in our forestry federalism:

1. Our constituency lacks clout, in Washington and in the state houses. Costly rearguard actions against funding cuts will ultimately lose.
2. Most of our federally funded programs for the states have either accomplished their purpose or address no clear federal interest. They cannot be justified in times of austerity.
3. Most forest landowners, even of small acreages, do not need or deserve federal payments to practice better forestry.
4. We are committing an unconscionable waste by applying so much administrative talent and time to the defense of outmoded federal freeloading.

5. Higher stumpage prices and stronger timber markets have revolutionized the potential for self-sustaining private forest management.
6. Industry sees its stake in timber supply and is prepared to contribute a share toward investments to upgrade private forest management.

A New Federalism for Forestry

The above considerations lead me to a proposal for a New Federalism for Forestry. This is an opportunity for state and national leadership for those who choose to take it. It is not an easy course. But it will build, rather than erode, professional self-esteem and success. Its chances of success are at least as great as our chances of freezing the old federalism at 1980 levels. As I recall it, the old federalism wasn't making us all that happy anyway.

A. Federal Role for State and Private Forestry
   1. An expanded extension program. Develop a vigorous program of forestry extension and education, coordinated across states and identifying measures to reach all citizens with forestry information. Not more than 50% federal cost-share. 10% from industry.
   2. An expanded program of forestry research emphasizing technology and management practices for small owners. Utilization and marketing and silviculture would be emphasized. A key field would be evaluation of programs designed to promote private forestry.
   3. Expanded utilization and marketing programs.[3]

4. Substantially upgraded professional continuing education. Budget cuts are restricting this activity--we must reverse the trend. More research will do us little good if practicing foresters never hear of it. Costs should be recovered by charges to using agencies.
5. Redirected efforts supporting demonstration forests, field demonstration of cost-reducing equipment and techniques applicable on small tracts, and integrated pest management.
6. Maintain strong technical expertise that is costly or duplicative for States to maintain themselves.
7. How will these be paid for? Simple. Halt immediately all federal funding for:
    a. CM-II and RCFP
    b. Cooperative pest control suppression projects, on all lands, except in legitimate quarantine situations.
    c. CFM, FIP, and ASCS forestry practices, except for actual erosion control.
    d. Forget about federal forestry loans and public timber crop insurance.
    e. RC&D and PL 566 forestry activities.
    f. Forestry-directed river basin planning.

B. State Role

1. Leadership in expanding extension and public education.
2. Develop systems of demonstration forests.
3. State and industry cost-sharing and market agreements for selected intensive practices.

4. Manage state lands well, as an additional mode of demonstration and leadership.
5. Continue effective programs of fire and pest management.
6. Upgraded resource and market assessment; and utilization technical assistance.
7. Contributions to decennial Forest Resource Evaluations.
8. Redirected CFM efforts for direct landowner on-the-ground assistance.

Develop state and industry funding sources for all of these programs.

Advantages of This Course

At first blush, what I advocate is madness.[4] For state forestry officials to voluntarily turn away from federal funding is a tall order. Why should they do it?

First, because fighting the trend of reduced federal funding is a highly wasteful use of time and talent, and it may fail. Then, we have nothing. We should use our time on more promising work.

Second, a bold program using state and private funding, and based on a clear forestry strategy, does have a chance of success. But only if a constituency is built, and a new framework other than federal handouts is developed. Trying to pull our own weight will do wonders for our self respect.

Legislatures will not be any more inclined to fund conservation than previously, so care is needed. Why not try, as in California, dedicating state forest revenues to forest improvement measures. Legislature might be very interested in hearing some rationale for a budget that is more convincing than "if we don't get these funds, we'll lose the federal money."

Finally, using state money will enhance our motivation to target our efforts with precision, and to secure binding commitments on followthrough from landowners who benefit. In the past, wasting Uncle Sam's money was not a sin ("if we don't spend it here, they'll waste it in Alabama..."). But a state can be expected to pay closer attention to the longrun benefits of investments made with its own funds. In all federal conservation programs, assuring longterm landowner followthrough has been one of the most vexing problems.

A New Federalism

Is this proposed New Federalism the correct path? Many would dispute this. But we can be certain that by 1985 a new federalism will emerge, whether we like it or not. Will we invest our talent and energy "justifying" and defending the anachronisms of the past, laws of the 1920's and 40's? Will we take the lead with our own new program for federalism in forestry? One that is based on a more defensible concept of a true federal role than simply that we want the money.

Let's not let the budget-cutters do it for us.

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FOOTNOTES

[1] On the history of these programs, see Steen (1976), p. 129-144 and ch. VII, and for a thorough description, see USDA. 1978.

[2] A short list of critics would include Satterfield (1981), Fedkiw (1981), John A. Zivnuska (1974) p. 240-241, and Marion Clawson, Strategies for future forest production, unpub. paper for RFF Conference on Forest Land Use. Nov. 30, 1981, p. 54.

[3] A recent study emphasizing the importance of these functions in contrast to subsidizing management practices is Osteen and Chapelle, 1981, p. 10-11.

[4] But there is evidence that at least one private company agrees with much of this. Georgia-Pacific Corp. 1982. p. 10.

Mr. **Reilly**. Thank you, Mr. Irland. You have done very well by your 50 States, representing them alone on this panel and bringing a particularly welcome set of information and perspectives.

Before turning to the respondents, I have a question for Mr. Wright, raised by something you said about the limited authority that you have for influencing the use of lands adjacent to the national parks and the emphasis you place on cooperative relationships, technical help, and so forth.

Many recent reports, including the report on the threats to the parks, have disclosed serious problems of park management resulting from the way that lands are used outside, just adjacent to the park boundaries. I wonder in view of that whether or not, given the subject of this panel, criteria for protection and management, the authority that you have in the Park Service is really adequate to protect the parks, to manage them consistent with your mission.

Mr. **Wright**. Not all of the authority that we need. There are a lot of influences that are occurring that are impacting on the parks that occur immediately outside, some influences from further out. One that comes to mind is the problems we are experiencing with acid rain and these sorts of things and the problems experienced with the solar operations and so on close by that are putting chlorides and things of this nature into the parks themselves.

I am not sure what kind of authority we would need to protect all of the units of the National Park System. For example, in the Great Smoky Mountains National Park we know that there are problems occurring in the Great Smokies that originate in Chicago with air pollution transportation and we do not know the magnitude or the distance of this.

We are doing research at this time. There are problems occuring with scenic intrusions outside of the parks such as clear-cutting practices, even outside of this country, such as the large mines produced in Canada.

So, no, not all of the authorities are there. I am not prepared to say what authorities are needed.

Mr. **Reilly**. Is it the purpose you would encourage this group, the workshops to pursue, to consider whether or not authority for protection and management is adequate in those specific instances where some kinds of additional policies might be necessary?

Mr. **Wright**. By all means.

Mr. **Reilly**. Thank you, sir.

We turn now to the respondents beginning over here on the far left with Dr. Jon Kusler of Jon Kusler Associates. You each have 5 minutes, I should point out.

STATEMENT OF DR. JON KUSLER, JON KUSLER ASSOCIATES

Dr. **Kusler**. Thank you, sir. I have gone through the earlier hearings and listened with interest to what has been said here today. And I wonder to what extent there has been thinking, specific thinking with regard to encouraging the sorts of local actions that everybody seems to feel are needed to protect the parks, to manage areas to protect wetlands and flood plains and historic sites.

The reason I ask is because of this emphasis on reduced budgets and the emphasis on shifting more responsibility to the States and locals. I find that with the reductions in land and water conservation funds and other types of Federal grants in aid, and assuming State level reductions in the amount of money that most of the States have to distribute, that I do not see the mechanisms for encouraging sources of local action and to some extent State action to protect what I think many people would conceive of as a Federal interest in some of these lands.

I am not offering really a solution to or an answer to that question, but I am hoping that it will be picked up by the workshops, because I feel it is a key topic. The question is not simply the issue of refunding old programs, but what kinds of new efforts could encourage very cost-effective State and local programs.

And I would like to suggest that at least some of the thinking should be directed to why locals acquired lands in the past and used them in an effective way. I think by examining very carefully how locals have set their priorities there may be some hints as to how the Federal Government could better encourage some of this action.

For example, I have worked with quite a large number of local governments who ask the question how much will it cost not to acquire the lands rather than how much it will cost to acquire them. I did a survey on 150 communities during acquisition of flood plains and in that particular instance they were very concerned about the cost not to acquire the flood plains, cost associated with providing public services, or a disastrous loss.

It seems to me that one topic where the cost of not acquiring land has received attention is barrier islands. One analyst has concluded that this cost is less than providing development-related services on the Federal level. The cost of not acquiring in certain other types of lands is also relevant to deciding how special values and areas are to be addressed in Federal land acquisition criteria.

I have found that the Federal land acquisition criteria in general has no correlation between protecting values and reducing costs. There is one very tiny program, operated by the Federal Emergency Managing Agency, and funded at a total of $12 million, that has been assisting communities in acquiring parcels of land that are subject to severe flood hazards. I was impressed with this program because it helps local governments to simply serve some narrow cost-reducing objectives.

The program works swiftly. It has an educational value that goes far beyond the cost of the program itself. I find that land acquisition, if for example you acquire land that has been severely damaged by flood hazards, this hazard is of great educational value with regard to other property owners in terms of practices for their use of the land is not to be acquired.

I believe certainly the special management area concept is one that could be pursued much more and not just simply in terms of the national green line areas and so forth, but how local efforts could be very cost effective.

I would like to really conclude with a question and what I guess I worry about is I hear a lot of talk about encouraging local governments and I guess I am worried about the extent to which we are translating that into specifically how funds, how management, how technical systems, how programs can be designed to encourage rather than, as I see it moving right now, in the other direction, local creative initiatives are diminishing due to the lack of funds and lack of matching efforts to cut back in other areas and so forth.

Mr. Reilly. Thank you. Mr. Henry L. Diamond, Esq., Beveridge & Diamond.

STATEMENT OF HENRY L. DIAMOND, ESQ., BEVERIDGE & DIAMOND

Mr. Diamond. I think it might be useful if I responded not as a Washington lawyer, which I am now, but as a former administrator of a land program for an Eastern State, New York State. There I was a commissioner of environmental conservation, an operation which had among other things land programs. Responding to both the opening remarks and this panel, I think it is important to keep in mind the fact that there are a lot of States east of the Mississippi, not much in public lands, but a lot of people.

And the public estate, the Federal estate, I think, we understand came into being quite by accident. It was not planned. It came into being by a series of historical accidents, which most of us are familiar with. Eastern States do not share in that estate, and do not have some of the problems the Western States experience in having the Federal lands as neighbors. Also, we do not have some of the opportunities.

I think it is important that when you look at the Federal program that we remember that Federal lands are a real estate program and a management problem, but they are also a massive program in the Federal Government. And as we look at it, I think we have to look at the impact of this program, what these lands do programmatically as well as what they do with real estate.

And I suggest that the accident of location of Federal lands should not be the sole determinant of the Federal role in providing some of the programs. And I realize we are now in an era where that is less possible and less practical. But easterners, New Yorkers and other people do have a strong interest in the Federal land, simply as travelers, consumers, and citizens they care about them. There is a little old lady in the Bronx who I assure you is worried about Yellowstone. She has never been there and will never get there. But these people worry about it a lot and it is important to them.

To take an example, in New York, to exchange 5 acres of land in the forest reserve, by constitution, you need a vote of the people. The heaviest vote against the exchange always came from the Bronx and Brooklyn from people who had never been there. The biggest vote for exchange, of course, came from the people who lived on the land.

A couple of specific points, I hope there is a heavy concern to the military lands, because small pieces of military lands are particularly important in the East. Again, we have this accidental location of forts in the early days and because they were located on the water they become very, very important for recreation and other needs.

Secretary Watt's comment was so apt that managers become extremely, extremely defensive. We have found the heavy importance to the national security of the officers' clubs located on beaches was an enormous bar to any transfer. The other aspect that I think is important to keep in mind is that there is a concept here, recycling, that was part of the original land and water fund concept.

Take land that you did not need and work on those and either exchange them or exchange the money. Now I understand in a period of extreme budget stringency that we have limits on this. But that is an important concept, I suggest, that we keep in mind. It is one that is important to the Eastern States for when you sell something in surplus, that is a very good idea. The question is: Do you retire the national debt or do you replace it with another asset?

That is a judgment call that has to be made by the Congress in light of other decisions. But I urge that you do not look upon this whole program as simply a real estate problem. There is a program involved here and because of the nature of the appropriations process and the budget stringency and the debt which we are all concerned about, it is the Eastern States concern that it would be easier not to appropriate while you have to manage lands.

I make it a plea in this consideration, even with the budget stringencies we face, that we remember that the proportionate share of programs in the East are important things to the people in the East and they watch it rather carefully.

Mr. **Reilly**. Thank you. Mr. William Chandler, W. J. Chandler Associates. Bill.

STATEMENT OF WILLIAM CHANDLER, W. J. CHANDLER ASSOCIATES

Mr. **Chandler**. Thank you. Most of my remarks this morning will really be questions. I would like to start off with the Forest Service. I was extremely interested to learn where the national grasslands came from, because I think I, like many other people around this town, had always labored under the impression that these were set-asides because these were valuable prairie areas or some other type of ecological property.

But from your remarks I have learned that these came from the Federal Government buying, as I understand it, marginal lands that were being farmed back in the 1930's. Who owned that property? Were those privately owned lands or were those Federal lands that were being farmed?

Mr. **Hull**. Those were private. There is one exception to that——

Mr. **Reilly**. Would you move the microphone.

Mr. **Hull**. There was a small percentage of those lands that are now in the national grasslands that came to use from the public domain lands that were acquired or interchanged with the Department of Interior and the ones that were acquired and managed under the Grazing Act, the BLM lands were transferred to the Department of Agriculture and were included in the grasslands. Essentially those were lands in private ownership that went into farming and the farming was not successful on them.

Mr. **Chandler.** I am going to jump to a quick conclusion here. Would you please correct me if I am wrong. In essence what we did back in the 1930's was to allow private individuals to go out and tear up private lands and the Federal Government came in and picked up the tab and went out and rehabilitated those lands in addition to acquirement.

Mr. **Hull.** Well, that is a little stronger than I would express it.

Mr. **Chandler.** Would you disagree with that statement, that basic conclusion now?

Mr. **Hull.** No.

Mr. **Chandler.** Is this liable to happen again today?

Mr. **Hull.** I really do not think so, no.

Mr. **Chandler.** Thank you. For the Fish and Wildlife Service, Walt, there have been identified some 280 species of plants and animals in the United States, that occur in the United States and/or foreign countries that are threatened or endangered with extinction.

There are estimated to be roughly 3,000 to 3,500 additional plant and animal species that may be endangered or threatened and we are still waiting for the Fish and Wildlife Service to tell us what they think the status of those species are.

Given the fact that you have already got 280 on the list, you are supposed to be preparing a recovery plan for each one of those species, has the Fish and Wildlife Service tried to come up with any kind of concept paper as to what kind of acreage they are going to need that is not now in the Federal estate to protect those 280 species? Do you have any kind of an overall ballpark estimate, that you will either have to buy in fee or easement or get some type of cooperative agreements on?

Mr. **McAllester.** We have generally identified for those species that have been listed, the areas that may be required under the recovery plans that have been developed and have made general estimates of those areas that we know are critical to the species that are being considered.

I would say it is a rather large acreage and a large acquisition figure. We continually refine the list and look for approaches that are alternatives to buying them in fee. Assistant Secretary Crowell described very well the need to own the fee to meet a major control of the area or, if you just have to protect the habitat, you acquire a lesser interest. In some of the areas we would be able to hold an easement interest or a cooperative agreement with the State or local agency.

The service has been cooperating with the Nature Conservancy in purchasing and holding some of these areas, but there is a large acreage that is being identified.

Mr. **Chandler.** What is the policy of the Fish and Wildlife Service right now? I mean, you all try to buy several refuges or refuge lands every year for endangered species purposes. Now, you have got a whopping $1 million, I think, in the budget this year for two endangered species area and yet you have got 280 that potentially need some kind of efforts.

Is it now your policy to try to place the burden of protecting those areas on the private sector and the State and local government or is the Fish and Wildlife Service still moving ahead aggressively to do something on the Federal level for management of the endangered species?

Mr. **McAllester**. The whopping million dollars we have in the budget is really the only new intrusion into the Land and Water Conservation Fund that has been permitted into the land and water conservation fund budget. The rest of the money has been earmarked to acquire areas that are hardship cases or court awards and so on. The Secretary is concerned about the endangered species areas and we are going through a screening process in selecting those that are most important. As the President's program for economic recovery produces a better economic climate, hopefully we will be able to preserve other critical areas.

Mr. **Chandler**. Senator Wallop, the point I would just like to make here in closing is that there is still a lot of work to be done in the protection of a wide variety of resources under various statutes and I am just concerned that this not be lost in the rush to better manage lands and cut back the budget and so forth.

Mr. **Reilly**. Thank you, Bill. Mr. John C. Sunderland, Game and Fish Commission of Arkansas.

STATEMENT OF JOHN C. SUNDERLAND, GAME AND FISH COMMISSION OF ARKANSAS

Mr. **Sunderland**. Thank you, Mr. Chairman. Our response to the panel is a statement, which is being distributed. I have been working since 1970 on the Arkansas State Game and Fish Commission. I am a wildlife biologist, and I currently serve as chief of our river basins section with responsibilities for environmental and legislative review.

My statement is intended to express the State Fish and Wildlife Agency perspective toward land protection.

Arkansas is possessed of two features which contribute greatly to its livability It has distinct physiographic regions yielding a variety of products and recreational opportunity and a public land ownership pattern that is representative of Arkansas' natural diversity.

The Game and Fish Commission in seeking to maximize its limited habitat acquisition dollar concentrates on preservation of bottomland hardwoods, especially in the Mississippi Alluvial Plain where agricultural clearing and drainage causes the greatest wildlife habitat loss.

This emphasis on bottomland hardwood acquisition was in recognition of the fact that approximately 3 million acres of upland habitat is protected in the Ouachita and Ozark St. Francis National Forests. Much of the West Gulf Coastal Plain in Arkansas is commercial timberland.

To date we have acquired approximately 280,000 acres with the most recent acquisition being a 1,700-acre tract of cypress/tupelo swamp in the Cache River Basin, the flyway. A very important part of our habitat protection effort has been the development of cooperative working agreements with Federal agencies holding land in Arkansas.

Approximately half of the U.S. Forest Service lands in the State are cooperatively managed. It has been our general policy to coordinate season and bag regulations, participate in the U.S. Forest Service planning processes and to support U.S. Forest Service land management.

The very unique Buffalo National River protects 96,000 acres of Ozark Mountain forest and the beautiful river. It links our own Buffalo River wildlife management area with the Sylamore District of the Ozark National Forest. It is unique in that hunting and fishing is not only a primary activity, but is complimentary justification for public ownership.

National wildlife refuges in Arkansas are another vital component of protected lands. Of the five, the 65,000-acre Felsenthal refuge is the newest and accommodates hunting and fishing over a major portion of refuge lands with little variation from statewide regulations.

There has been a very wise expenditure of migratory bird funds in Arkansas and efforts to encourage continued Federal acquisition, such as in the proposed Cache River refuge, are needed in recognition of the international significance of Arkansas' migratory waterfowl habitats.

Corps projects in Arkansas are of three major types: Deep water reservoirs; river navigation; and flood control and drainage.

The Arkansas Game and Fish Commission recognizes the public benefits of certain Corps' projects and has contributed dollars and manpower to improve hunting and fishing opportunity. Fisheries resources are managed by the Arkansas Game and Fish Commission within the constraints of Corps project purposes.

Peripheral lands on some projects are managed for wildlife under cooperative agreement. Within the last 2 years we have renewed our commitment to this concept and we have two biologists working full time toward coordination.

Corps lands, especially those included in the Arkansas River navigation project, are particularly suited to management for farm game species through cooperative farm leases. Administrative and development costs can be recovered through sale of farm products.

A very important aspect of these lands is their distribution across the State and the fact that they are accessible from existing facilities, roads and ramps, in many instances. No other category of lands could be so readily managed to address the critical need for farm game and nongame habitat.

Military lands in Arkansas, under cooperative management, are best represented by Fort Chaffee and Camp Robinson, which in both instances, public wildlife benefits are provided immediately adjacent to the State's largest cities.

Arkansas with its 2.28 million people distributed over 34 million acres is still a rural State. It is that quality, plus its Sunbelt location, which encourages immigration. Northwest Arkansas is expected to attract increasing numbers of retirees. The Arkansas River Valley is attractive to new industry.

While rural, Arkansas land is not idle. The Mississippi plain is intensively farmed for rice and soybeans and the West Gulf Coastal plain is only slightly less intensively managed for timber, poultry and livestock. The mountain regions of Arkansas, while supporting much of the recreation industry, also produce livestock feeds, poultry, vegetables, and fruits.

The key to maintaining productivity and livability in Arkansas is maintenance of soil and water resources on private land and protection of significant portions of all habitat types in public ownership. We believe there to be no excess Federal land in Arkansas.

If managed for multiple use, including hunting and fishing, these lands compliment efforts by the Arkansas Game and Fish Commission and the Arkansas Department of Parks and Tourism to provide the outdoor experience for which Arkansas is famous.

Neither the wildlife resource nor the economy would in our opinion benefit from disposal of limited public lands in Arkansas.

Mr. **Reilly**. Mr. Sunderland. Your time is up. Will you close it in a couple of sentences?

Mr. **Sunderland**. To summarize, the various types of Federal lands in Arkansas compliment the Game and Fish acquisition efforts and together all of these lands comprise not an excess but a remnant of wildlife habitat. If managed properly they will support a broad array of public uses.

[The prepared statement of Mr. Sunderland follows:]

Thank you Mr. Chairman -

I am John C. Sunderland, an employee since 1970 of the Arkansas State Game and Fish Commission. I am a Wildlife Biologist and currently serve as Chief of our River Basins Section, with responsibilities for environmental and legislative review. My statement is intended to express the State Fish and Wildlife Agency perspective toward land protection.

Arkansas is possessed of two features which contribute greatly to its "livability": (1) Distinct physiographic regions yielding a variety of products and recreational opportunity (Map I); and (2) A public land ownership pattern that is representative of Arkansas' natural diversity (Map II).

The Arkansas Game and Fish Commission, in seeking to maximize its limited habitat acquisition dollar, concentrates on preservation of bottomland hardwoods, especially in the Mississippi Alluvial Plain where agricultural clearing and drainage causes the greatest wildlife habitat loss. This emphasis on bottomland hardwood acquisition was in recognition of the fact that 3,000,000 acres of upland habitat is protected in the Ouachita and Ozark St. Francis National Forests. Much of the West Gulf Coastal Plain is commercial timberland.

To date we have acquired approximately 280,000 acres with the most recent acquisition being a 1,700-acre tract of cypress/tupelo swamp in the Cache River Basin (Mississippi Flyway). A very important part of our habitat protection effort has been the development of cooperative working agreements with Federal agencies holding land in Arkansas. Approximately half of U. S. Forest Service lands in Arkansas are cooperatively managed. It has been our general policy to coordinate season and bag regulations, participate in USFS planning processes and support USFS land management.

The very unique Buffalo National River protects 96,000 acres of Ozark mountain forest and the beautiful river. It links our own Buffalo River Wildlife Management Area with the Sylamore District of the Ozark National Forest. It is unique in that hunting and fishing is not only a primary activity, but is complimentary justification for public ownership.

National Wildlife Refuges in Arkansas are another vital component of protected lands. Of the 5, the 65,000-acre Felsenthal NWR is the newest and accommodates hunting and fishing over a major portion of Refuge lands with little variation from Statewide regulations. There has been a very wise expenditure of Migratory Bird Funds in Arkansas and efforts to encourage continued Federal acquisition (such as in the proposed Cache River NWR) are needed in recognition of the international significance of Arkansas' migratory waterfowl habitat.

Corps' projects in Arkansas are of 3 major types: (1) deep water reservoirs; (2) river navigation; and (3) flood control and drainage.

The Arkansas Game and Fish Commission recognizes the public benefits of certain Corps' projects and has contributed dollars and manpower to improve hunting and fishing opportunity. Fisheries resources are managed by the Arkansas Game and Fish Commission within the constraints of Corps' project purposes (hydro, navigation, etc.). Peripheral lands on some projects are managed for wildlife under cooperative agreement. Within the last two years the Ark. Game and Fish Commission has renewed its commitment to this concept and now has 2 Biologists working to expand cooperation. Corps' lands, especially those included in the Arkansas River Navigation Project, are particularly suited to management for farm game species through cooperative farm leases. Administrative and development costs can be recovered through sale of farm products. A very important aspect of these lands is their distribution across the State and the fact that they are accessible from existing facilities (ramps, roads) in many instances. No other category of lands could be so readily managed to address the critical need for farm game and nongame habitat. Military lands in Arkansas, under cooperative management, are best represented by Ft. Chaffee and Camp Robinson. In both instances, public wildlife benefits are provided immediately adjacent to the State's largest cities.

Arkansas, with its 2.28 million people distributed over 34 million acres is still a rural State. It is that quality, plus its sun belt location, which encourages in-migration. Northwest Arkansas is expected to attract increasing numbers of retirees. The Arkansas River Valley is attractive to new industry. While rural, Arkansas land is not idle. The Mississippi Alluvial Plain is intensively farmed for rice and soybean production. The West Gulf Coastal Plain is only slightly less intensively managed for timber, poultry and livestock. The mountain regions of Arkansas, while supporting much of the recreation industry, also produce livestock feeds, poultry, vegetables and fruits. The key to maintaining productivity and "livability" in Arkansas is maintenance of soil and water resources on private land and protection of significant portions of all habitat types in public ownership. We believe there to be no excess Federal land in Arkansas. If managed for multiple use, including hunting and fishing, it compliments efforts by the Arkansas Game and Fish Commission, and the Arkansas Department of Parks and Tourism to provide the outdoor experiences for which Arkansas is famous. Neither the wildlife resource nor the economy would, in our opinion, benefit from disposal of limited public lands in Arkansas.

It must be apparent that the greatest challenge wildlife managers face is that of promoting application of wildlife management practices on private lands. Any significant Federal land disposal program only contributes to this problem. If there are excess public lands in the western United States, there are none in the east. (Map 3). The proposal to sell "where private use values exceed public use values" ignores the uneven national distribution of public land. It would seem that a small tract of public land in the east, capable of sustaining limited public use, though by its very scarcity extremely important, could by this rationale be declared to be best serving public interest in private ownership. Proceeds from the sale would bypass the Land and Water Conservation Fund and make a miniscule contribution to retirement of the National debt? If I sound a little confused on the subject, it is because the Arkansas Game and Fish Commission has been supplied no information on the disposal programs initiated in executive branch agencies.

It is our position that there should be no significant sale of public lands, and that Federal agencies should continue to manage for multiple use, cooperating fully with State natural resource agencies. Isolated or small tracts having outdoor recreation value should be retained, offered to State or municipalities for public recreational use or exchanged for private inholdings with equal public values. It is also our position that in order to accommodate the full array of outdoor public use, fee title is the preferred estate. As long as there are willing sellers we will continue to purchase fee title and exhort the same approach on Federal mitigation and Refuge acquisition. We believe this to be the most cost effective approach to habitat preservation, given the fact that easements for full public use approach fee title cost and require constant attention to enforce adherence to terms. They leave neither party with an easily marketable estate. Fee title acquisition is the only approach that escrows full public use values (including uses not presently envisioned) and preserves the option of retaining a lesser estate should National interest dictate such.

If I may summarize, U. S. Forest Service lands with their managed timber stands, road systems and dispersed recreational facilities, compliment Corps lands with their highly developed public use facilities and water based recreational opportunity. The Buffalo National River preserves a National heritage of free-flowing river and Ozark mountains while at the same time accommodating public use ranging from sightseeing to bear hunting. Military lands even with access and use restrictions preserve vital open space and wildlife habitat adjacent to Arkansas' 2 largest urban areas. Commission Wildlife Management Areas with their limited or primitive public use facilities appeal mostly to hunters, fishermen and other wildlife oriented use. National Wildlife Refuges are similar with habitat protection and wildlife conservation being the major purposes of both Refuges and Wildlife Management Areas.

Together these lands comprise, not an excess, but a remnant of wildlife habitat capable of supporting a broad array of public use under sound multiple use management.

Thank you Mr. Chairman for inviting the Arkansas Game and Fish Commission's participation in the Land Protection and Management Workshop.

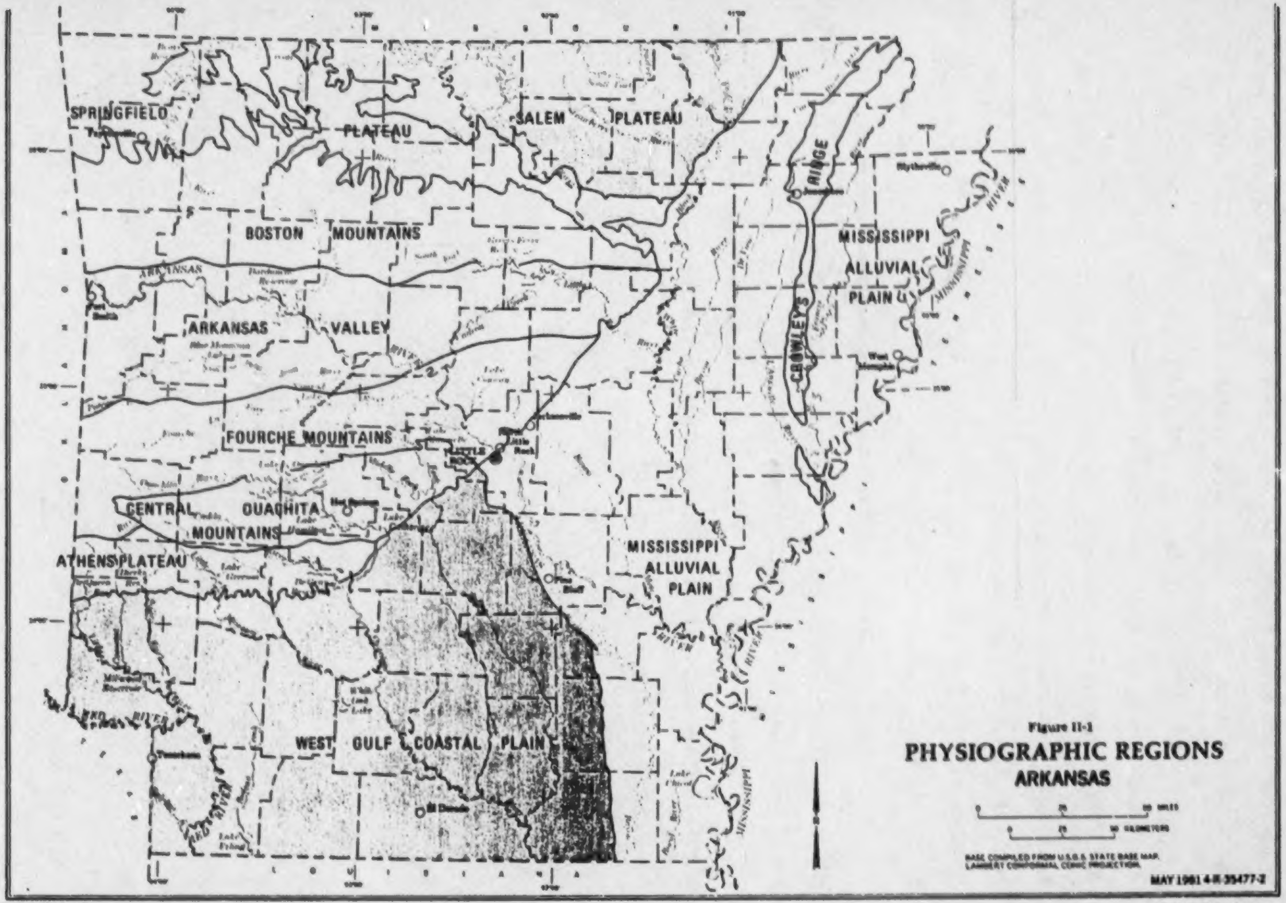

SPRINGFIELD
PLATEAU
SALEM
PLATEAU
BOSTON
MOUNTAINS
ARKANSAS
VALLEY
FOURCHE MOUNTAINS
CENTRAL
OUACHITA
MOUNTAINS
ATHENS PLATEAU
WEST
GULF
COASTAL
PLAIN
MISSISSIPPI
ALLUVIAL
PLAIN
CROWLEY'S
RIDGE
MISSISSIPPI
ALLUVIAL
PLAIN
ARKANSAS
RIVER
RED RIVER
MISSISSIPPI
RIVER
Little Rock
L O U I S I A N A
0
25
50 MILES
0
25
50 KILOMETERS

Figure II-1
PHYSIOGRAPHIC REGIONS
ARKANSAS

BASE COMPILED FROM U.S.G.S. STATE BASE MAP,
LAMBERT CONFORMAL CONIC PROJECTION.

MAY 1981 4-R-35477-2

MAY 1981 BASE 4-R-35477

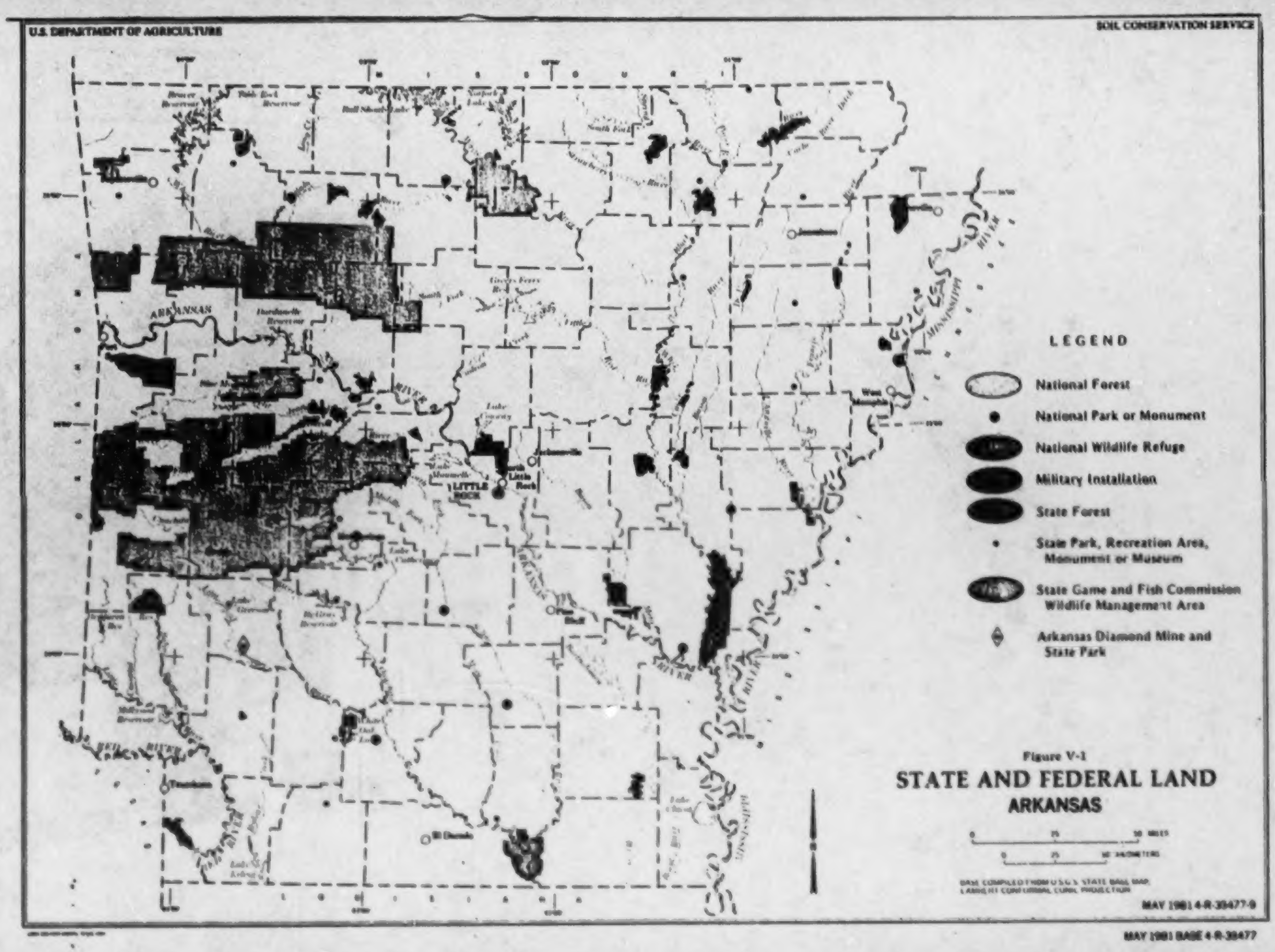
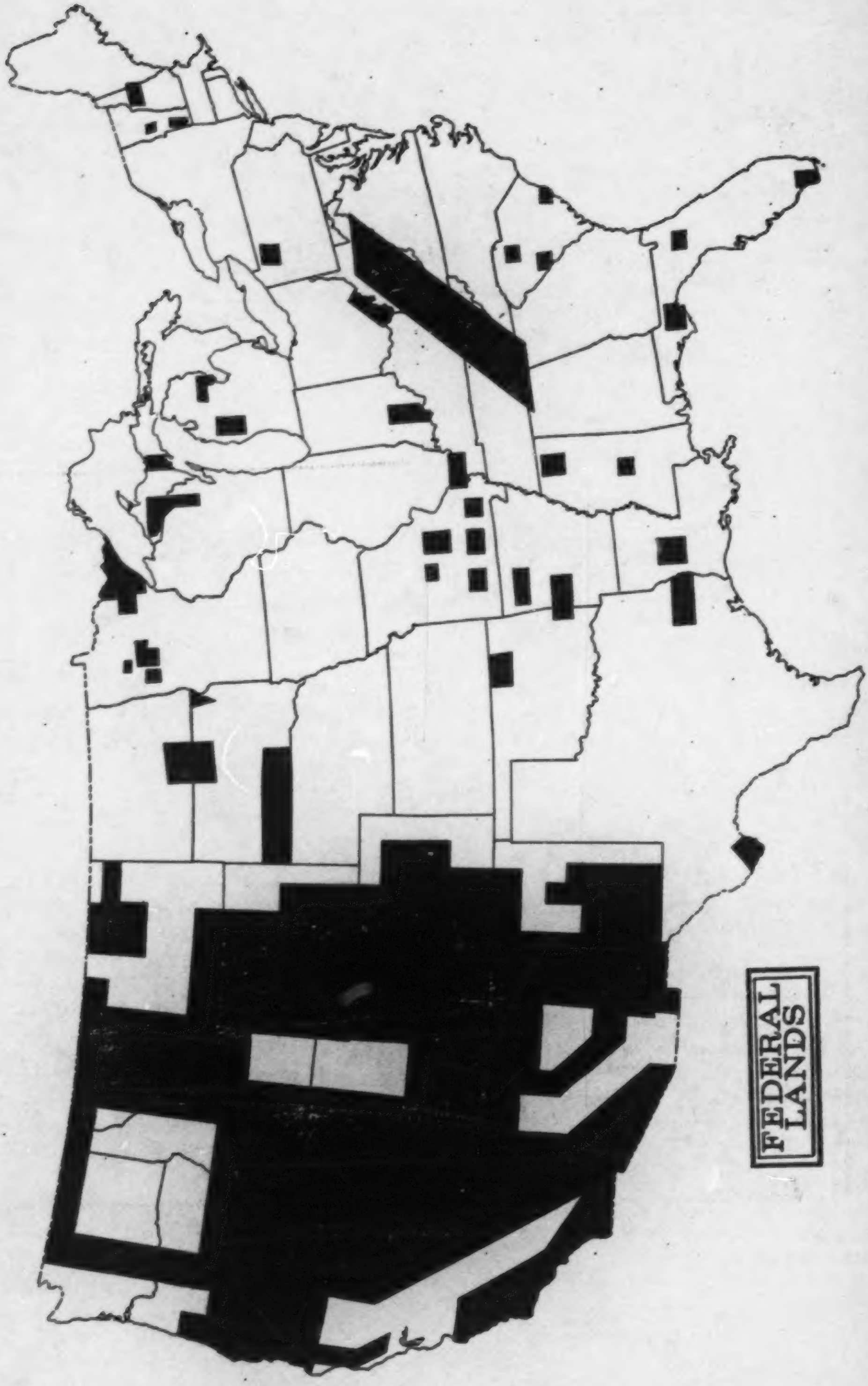

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE
LEGEND
National Forest
National Park or Monument
National Wildlife Refuge
Military Installation
State Forest
State Park, Recreation Area, Monument or Museum
State Game and Fish Commission Wildlife Management Area
Arkansas Diamond Mine and State Park
ARKANSAS RIVER
MISSISSIPPI RIVER
RED RIVER
LITTLE ROCK
North Little Rock
Lake Ouachita
BASE COMPILED FROM U.S.G.S. STATE BASE MAP
LAMBERT CONFORMAL CONIC PROJECTION
MAY 1981 4-R-39477-9
MAY 1981 BASE 4-R-39477

Figure V-1

STATE AND FEDERAL LAND

ARKANSAS


FEDERAL LANDS

Mr. **Noonan**. We have heard this morning about the large number of Federal lands that are going to be inventoried for possible disposal, either for reducing the Federal debt or for exchanges or what have you. This is going to require a large amount of financial and personnel resources to undertake this process, especially in accordance with the Federal Land Protection Management Act. FLPMA, as you know, encourages intelligent and balanced resource management, but also has some detailed procedures that are required in determining the national interest and what should be retained and disposed.

My question is do you feel you have the personnel and financial resources at present levels to achieve the objectives that we heard this morning, or are you anticipating additional budget requests?

Mr. **Burford**. I think there will probably be some budget requests show up in the 1984 budget, which will be specifically targetted to do that, but I think it is a process which will continue. It is not something that is going to take place overnight. It is a continuing process and as you know only those lands which our land use plans show to be available for exchange or sale are being considered. The only ones that can be considered for disposal under present law are those ones which have been identified as being available for these purposes at the present time.

Now, as the Secretary made very clear this morning, there are certain lands in Interior that are not BLM lands but lands of the National Park Service and the Fish and Wildlife Service, and Indian trust lands are not being looked at, nor at the present time are any wilderness areas or any of the areas which we have already gone through the planning process being looked at but the lands that are being looked at are those scattered tracts and lands adjacent to the towns.

I think we will probably come up with an identification of close to 2 million acres of land. At present plans have already identified their best use should be sale. I think one of the examples of that is there are 8,000 acres in Oklahoma which are scattered in such a land pattern that the largest tract is 160 acres.

That obviously is not manageable as a land pattern. BLM cannot afford to take care of that land. We don't even know the location of some of it. We know we have to trespass on it. We know that it would be more expensive to try to consolidate that some place in the State of Oklahoma for the Federal Government than it would be to dispose of it. So I think that is land that will be disposed of.

So I think that is land that will probably be considered for disposal. We have those same types of land patterns in a lot of Western States and a lot of those lands have already been identified. That is what we are in the process of getting together, the total number of acres that have been identified by land use plans as being available for disposal or exchange.

Mr. **Noonan**. Once those lands are identified, as I understand it, you will still have to go through the EIS requirements, the appraisal process, et cetera.

Mr. **Burford**. Yes. We must assure the 228 million stockholders that own the land, the Federal land, and that little lady in the Bronx is one of them, are entitled to get fair market value for any of the lands that are disposed of.

Mr. **Noonan**. My concern is are there financial resources currently in the Federal estate managing agency, are they adequate for the FLPMA planning process?

Mr. **Burford**. Yes. We feel that they are, yes.

Senator **Wallop**. Pat, I have an observation here. While FLPMA has a good design for assuring that the amount of money that the Federal Government receives for anything it disposes of is fair market value, the process also works in areas around cities like Rock Springs, Wyo., to really enhance the holdings of Union Pacific, for example.

You go through the appraisal process and get an appraisal that is put up there and they can keep those land prices escalating all along simply by the fact that if you don't dispose of it within the 6-month period you get a new appraisal going.

And all that does is sort of managing in Pacific lands and does very little for getting the landlock problems of the local community, such as, say, Rock Springs, into their planning process and into a situation where they can actually accomplish something through that process.

They have been very good in trying to get those disposed around those cities, but the process in those respects is very cumbersome and is really not ultimately in the public interest, because both work to lever each other up and the landlock situation remains.

Mr. **Noonan**. That is my concern. The communities, I think, are disadvantaged in these cases, because that process does take so long and it is cumbersome.

Mr. **Burford**. We did have a sale in Rangely, Colo., about a year ago. We were sued over the fair market value issue. The suit was just recently decided and the Bureau of Land Management won the case. But the private people who were in control of all of the land which was available to Rangely for expansion had artificially high prices on it and they disagreed with the appraisal methods of the Bureau, but we did win the case in Judge Mason's court in Denver.

And that land was sold for around, $4,800 an acre for expansion of that city. We have a lot of landlocked communities in the West, some of which are entirely landlocked by either the Bureau of Land Management or the Forest Service, or a combination of the two.

Senator **Wallop**. I would just like to point out that the reason the process works as I described it, along the Union Pacific, is because the old checkerboard pattern, which granted alternating sections to Montana. That is an enormous landholding.

It is not as though they are sitting there with some kind of contrivance with anybody, it is just the way the design has worked so that one levers the other. And the ultimate loser is the planning capacity of the cities or communities to have some sort of orderly process to growth.

Mr. **Reilly**. May I ask a point of clarification on something you just said, Mr. Burford. I thought I had understood the Secretary's statement to exclude wilderness areas from the assets management and potential divestiture program.

Mr. **Burford**. That is right.

Mr. **Reilly**. You said for now. Is that right?

Mr. **Burford**. No; I did not say for now. They are excluded entirely. But I think maybe you are making an assumption. The wilderness areas that exist today have not come about as a result of any planning in the Bureau of Land Management.

They have come about from the planning of the Forest Service. We now have wilderness study areas and those are not being considered for sale until Congress makes the decision as to whether they are to become wilderness or whether they will be returned to the public domain. Right now they are in a state of limbo.

Mr. **Reilly**. I want to turn this back to the panel shortly. I would like to get one other clarification, if I could. There is an example of land, which I believe is the Defense Department land on the Delaware coast, adjacent to very popular State beaches. The State of Delaware would very much like to have that land turned over to it at no cost to complete its recreation land plans there.

My understanding is the Federal Government under this new policy is obliged to say to them that you can have it if you are willing to pay fair market value for it.

In looking back at the long history of the Property Review Board, and the difficulties it got into when the purposes for which it was designed were environmentally enhancing and recreational, I wonder how you would expect to deal with State and local governments in situations like this, where there are angry threats of States cutting off access if it is sold to certain kinds of developers, and so forth.

Do you have experience with that? Do any of you care to comment?

Mr. **Burford**. Are they DOD lands?

Mr. **Reilly**. Yes, they are.

Mr. **Burford**. Unfortunately, we don't have anybody from that Department here.

Mr. **Reilly**. Except for the Corps of Engineers.

Mr. **Sims**. I am not working on those lands, but any DOD lands that are excess and available to the State or locals would be at fair market value.

Mr. **Reilly**. Would these lands be subject to any constraints that would prevent the private developer, for example, from purchasing——

Mr. **Sims**. I am not familiar with the military side and I don't care to make these kind of restrictions. We do have some people here from the military that——

Senator **Wallop**. I might say that at least as far as the Secretary's testimony with regards to what they intended with recreational things, it would seem that in the Interior Department the recreation would have a high consideration.

Mr. **Burford**. I know you are familiar with the good neighbor policy and the lands that were applied for under, by the various communities, counties, States, et cetera, in the Western States primarily, those are being processed and have been processed. All of those for which application has been made prior to the issuance of the Executive order will continue to be processed, because the Executive order has not been issued.

Anything that is applied for after that will probably go to the Property Review Board in addition to being processed by the

Bureau. We have had requests for I think in the neighborhood of 900,000 acres under this program to provide land for recreation, public services and community expansion, et cetera. Those for which the application has been completed are in line, so to speak, and we will continue to process them up until September.

Any applications received after that time will probably be subject to the Property Review Board.

Senator **Wallop**. Thank you. Before you go back, I have to go to another meeting and I will join you again this afternoon. I just want to say that I have particularly enjoyed this morning and this panel and their respondents. I want to say to you, Mr. Irland, I thought yours was a very articulate statement of what is going on in the States.

We do bumble into things, some good and some bad, and some we purposely walk into, again some good and some bad, but overall the records of the States are not bad in dealing with the resources that they have.

I would just make one other comment on Dr. Kusler's remarks and if you are going to consider the cost of not acquiring, and I think you should consider that by all means, it becomes even more critical that you consider as well the cost of managing things which are of no real public production to the United States, so that you can put those two things somehow or another into some sort of perspective.

And how that takes place, I suppose is going to be something that involves us not only in the panel but in all of the other various roles we play with regard to these processes.

I will join you this afternoon and I appreciated this morning very much.

Mr. **Reilly**. I turn now to the respondents for any further questions you might have.

Mr. **Chandler**. Bill, I have one point to follow up on what you are inquiring about. It is my understanding that a key decision in that whole business with the Delaware State and Delaware beach lands is how GSA decides to classify that property.

If they decide to classify its highest and best use as commercial, they may turn around and say we want to sell it, but if they go out, do their second evaluation and market analysis and say that we think it ought to be for public purposes, then they will throw the process open to solicitation for the State government to pick up that property for recreation or whatever.

Mr. **Reilly**. Is that process set out in the Surplus Property Disposal Act? Is that what they would be operating under?

Mr. **Chandler**. Right.

Mr. **Irland**. And that is not modified by new disposal initiatives. Is it your understanding that would continue to operate even under the new regime of sale?

Mr. **Chandler**. Yes; they are still going to go out and make the determination as to what they think the best use of the property is going to be. And it used to be that they would just simply say the property is surplus and everybody would send in their nomination saying, we want it for this and we want it for that and so forth.

They are not going to be able to do that any more, as I understand it. They are not going to let the public request raw land, so to speak, and then sort of automatically choose one of the public uses. First, GSA is going to make a marketing analysis to determine what they think the property ought to be used for and then if they decide to use it for a public purpose, they will then notify the State and local agencies that the property is available for public purposes and take applications to pick up that property either at discount conveyance or no cost or maybe a negotiated sale.

They are first going to make a decision themselves as to what constitutes a public purpose, which I think is probably going to also produce a conflict, since if they don't talk to the State and local governments, first, about what they think they want it for, there could be some problems there, GSA making sort of an in house decision and then finding out that the State and local government want the property for a park or some other kind of public facility.

So it will be interesting to see how that process works.

Mr. **REILLY**. If they don't know what the State of Delaware wants, they have not been reading the papers. Mr. Irland.

Mr. **IRLAND**. I would like to make a few remarks on that. First, I would like to be certain that I understand as you described it the park kinds of uses that all procedures will still be followed or not.

Mr. **BURFORD**. I speak only for the Bureau of Land Management and, yes, they will. As I said on those applications which have been in for some time now and the application will be completed before September 1, they will continue to flow right on. Applications in the future will probably be processed by the Bureau of Land Management and carried on through the Property Review Board.

Mr. **REILLY**. Of the agencies which are here, it is not totally clear to me and it is increasingly important, under what circumstances does GSA become a disposing agency? As I understand it, they don't become involved in a BLM transfer. Is that correct?

Mr. **MCALLESTER**. No; on the lands, other than the public lands, for which BLM was responsible that are administered by the Federal agencies, once they declare land excess to that agency, the responsibility for disposal passes to GSA.

Mr. **REILLY**. Virtually everybody but the Interior and Agriculture, but the Forest Service, Parks, BLM, public domain land agencies would use GSA. Is that correct?

Mr. **MCALLESTER**. For any land that is not a part of the public domain. So if there are fish hatcheries and they are declared excess, they are then passed to GSA for disposal and then there is a whole regimen of laws that affect the disposal under the Federal Property and Administrative Services Act, which sets up GSA's process.

So on recreation lands, the decision on what should be done and how they are disposed of lies with the Administrator of GSA. Once GSA says this is recreation land, available for conveyance to a State or city, then the Secretary of the Interior has the responsibility, as I understand it, as to whether it will be discounted and the deed is actually prepared in the Interior Department at the full price or discounted price.

I presume the procedure under existing law does not change but the emphasis of policy may change.

Mr. **IRLAND**. If I could comment on this, I think it is an important point to stress here in our Federal system, I would like to be able to, first of all, state the perspective that this is not necessarily the administration's position of the State of Maine.

It is my understanding that most States would charge a lower unit of government something like fair market value for transfers of title on it. Also, most States have provisions, and I know I entered into some of these in Maine, for leases transferring the management rights and other ways to allow the local unit or even the private sector to achieve its objectives.

For example, there was a lease for a skiing area which involved the building, an ice rink, and a set of cross-country ski trails. They leased the State land for that use. And that met their objective. They did not have to acquire or buy it.

So there is that avenue that is available for meeting a lot of these needs. Where title was actually involved and we were even so deep into this that the county jail, when we felt there was cash and that there was title if they wanted it.

And I think that most States would follow that policy with respect to junior laws of government and I think the Federal Government ought to follow the same policy with respect to the States, and as was said by the gentleman from the Property Review Board, that we should not free any of this land until we have been through the alternative uses.

But I think just focusing on sales and transfer of the fee, we are overlooking the possibility of achieving objectives with other means than the transfer of a fee and those other needs are often more efficient.

Mr. **Reilly**. I think it is important to point out that in many of the States, though, that would result, given their property tax situation and the tax process they are under, in property passing to development uses. In other environments and context that might not.

Mr. Chandler, did you want to comment? Dr. Kusler.

Dr. **Kusler**. I am wondering in the light of the broad interest in adjacent land problems and also in-holding problems, does any agency have a set of guidelines specifically for how these lands, private lands within the areas that you manage or specific guidelines on how you plan lands adjacent to the larger units with, let us say, local governments and States?

I am very curious over the last few years, because this issue has emerged and I have yet to see any specific guidelines by the agencies with regard to private lands and public. Maybe I am just not aware of what is occurring.

Do you have any specific guidelines, any agencies, for planning private lands within your larger units or adjacent lands?

Mr. **Burford**. Speaking for the Bureau of Land Management, we have specific guidelines where we consult with local units of government to consider their plans and adjust and work it out back and forth between us. So we do have a consultation period, not only with the Government per se and the public interest groups, but also the State and public governments where you consult with them on every land use plan that goes out.

We are required by FLPMA to take into consideration and have the public participate in policy and a set time for it. We are making some changes in that, trying to get that public input earlier in the process than it was in the past, so that the needs and wants of the public are looked at as soon as the land use plan is started.

Dr. **Kusler**. Does your planning boundary extend outside of the BLM lands or does it essentially stop at that?

Mr. **Burford**. Generally speaking, we under this administration try not to make plans for private ownership included. In other words, we do not like to impose on you, the State, the local government or the private individual to certify use for his land.

We do not think that that is a legitimate reason for existence of Federal Government to tell State and local governments how they should be treating their lands. It is also one of the reasons for the focus, as was mentioned here earlier, of Utah in trying to block up their State lands and their in-lieu selections, so that they will have large enough blocks that they can effectively manage those lands where in essence now the Bureau of Land Management has most of the decisionmaking power over the four sections in each township that Utah owns, that they got when they were granted statehood.

One of the contentions of a lot of the county commissioners, the State of Utah and a lot of Western States, is that we were effectively putting our management decision on that State land. Many States and many county commissioners and many private individuals resented that. It is something that, because of the land pattern, you cannot get away from, but the blocking up of those State lands would allow them to make their own decisions.

Mr. **McAllester**. It is really a constitutional issue. There is no general authority for any agency to plan for the use of private land without a specific act of Congress that gives that authority, so that the Fish and Wildlife Service, and I think most of the other agencies, try to work in cooperation with local planning authorities to persuade their direction of the plan, but there is no way in which a Federal agency can control the use of private lands even within an authorized area without acquiring some of those rights under an authorization from Congress.

Mr. **Reilly**. Any other questions or comments?

Mr. **Irland**. I would like to respond to that. I think what this gentleman is saying is true, at least in the U.S. Forest Service, but every National Forest has its, what is called, land adjustment plan, which identifies those lands that are deemed surplus to the management program and also lands that ought to be acquired for one purpose or another, whether it be in holding or consolidation or acquisition or whatever and I don't know whether the BLM management will also have land acquisition and land adjustment plans. But to the extent that such plans exist, then there is reason for adjustment being made about a particular piece of private land that in the judgment of the people making the plan, it belongs in the publicly owned unit at some time in the future.

It may well be that that is the source of resentment and conflict, but it also helps clarify what the agency is looking for. And I have found in practical experience that people appreciate knowing what your objectives are, so that when you are trying to go from one county to the next and when you are in an acquisition mode, they appreciate knowing where you plan to stop and that helps them make a certain amount of security in planning too.

I wonder whether or not you are able to respond as to whether or not your agencies do in fact have land adjustment plans and what issues you have run into in that.

Mr. **Burford**. We have in our planning process identified those lands that should remain in the public ownership. We also identify boundary changes that should be worked out with either the private ownerships during exchange agreements or an exchange in the purchase agreement.

But we do not aggressively pursue land acquisition by trying to force anybody out of that area. We also have an ongoing program with the Forest Service where we have entered into the lands and we try to adjust those boundaries for more efficient management of the lands.

I think one prime example is the section of Bureau of Land Management land which is inside a national forest, inside the boundaries of a national forest near the Nevada/California line.

It is obvious that that section should be transferred to the U.S. Forest Service. What that effort would demand from each agency is an ongoing effort in an attempt to make more efficient land management possible between the two largest land owning agencies.

We also have an exchange program with private people in order to straighten out their boundaries. In general, we do not have an acquisition program of buying out private ownership within the public domain.

I might add in general as far as the disposal of whether it goes to GSA or to the Bureau of Land Management, the rule of thumb is if that land was acquired land, it will be handled by GSA. If it is public domain land, in other words, if it was BLM land to start with, BLM will have the sale or disposal. If the military would have purchased it, it will probably be sold by GSA.

Mr. **Reilly**. Any other questions or comments over here? Bill.

Mr. **Chandler**. I have two quick questions regarding the corps landholdings. Mr. Sims, you said you have about 12 million acres of which 450,000 are in permits and licenses. Do I presume correctly that you own that land or that you have acquired administrative rights over it through some kind of permit or licensing process?

I am not clear on what you mean there. Is that your land that you give permits on or licenses on or vice versa?

Mr. **Sims**. I believe that is land that we acquire for permits or licenses.

Mr. **Chandler**. Are the 3,000 acres that you have easements on, are those all permanent easements or is there a mixture of permanent and——

Mr. **Sims**. The easements vary. It is primarily floating easements.

Mr. **Chandler**. Floating easements.

Mr. **Sims**. For flood boundaries and it varies to the degree of the frequency of the flooding.

Mr. **Chandler**. Thank you.

Mr. **Reilly**. I am going to turn now to the very patient and attentive congregation and invite any questions for the panelists, or comments. All the way in the back.

Mr. **Metzger**. Phil Metzger, Office of Policy Analysis, Interior. The question is for Mr. Irland. I was intrigued by Jon Kusler's thoughts about possible needs for some type of assistance by State and local governments in assuming some of the responsibility for policies, land policies, and other initiatives of placing them.

I wonder what your thoughts are on what areas, if any, would exist in some other States, to your knowledge, and what kinds of needs they would be.

Mr. Irland. I guess that is going to require a lot more site specific background than I would have. But to respond to you in very general terms, I think that there are probably many State resource management agencies that would perceive problems with their programs that have resulted from adjacent development and sprawl and land and subdivision activities that have been spawned surrounding some big Federal reservations.

There are often water management questions that arise. Generally I think we can say that between land and water conservation fund and State bonding, which is on the order of $4 billion by the various States since 1965, it is a very impressive indication that the States are serious about their land systems and acquisitions.

The States have made progress in this area, but with the fiscal pressures and the relative downgrading of conservation and what I call traditional bread and butter conservation issues in the public mind, in most States, the real requirement is not so much bureaucratic or technical or inventory, it is not so much studies or problem solving at the local level, but it is developing some real, major leadership to identify what is the public concern.

Some of the ones that Dr. Kusler mentioned come up every time we have a colossal storm and then they are forgotten by the screams and hollering of the real estate agents and everybody else who does not want to tolerate what has been done.

The real need is major leadership. If issues arise and we can convince Governors and legislators that we have major public benefits and costs to solve these problems, there are several States that are very innovative in funding, such as Missouri and others. So I guess I would put my finger on the question of leadership as the real answer to that question.

Mr. Reilly. Barry Tindall.

Mr. Tindall. Barry Tindall, National Recreation and Park Association. I am intrigued by the discussions and questions that have come about from the National Government's proposal to accelerate the identification and transfer and sale of certain public properties.

I don't think the administration's two representatives here this morning, Secretary Watt and Dr. Harper, frankly, shed much additional light on that issue. As a practical matter, the consideration and the review of excess and surplus properties for park and recreation values has come to a screeching halt in the Department of the Interior.

At least two Federal laws are being winked at, Public Law 91-485, section 303(C) of Public Law 95-625, which requires that we give up excess properties for refuge and park values. I don't mean to be critical by having said that, but I simply suggest as was suggested more specifically by the questions raised here this morning that the National Government owes all of us a much more open process in terms of the status and the conditions surrounding the disposal of some very valuable properties.

As a practical matter, State and local governments in many cases will not effectively compete with private sector acquisition interests. And each day we are getting calls of panic from State and local governments, some in the West, who have to deal or are interested in the GSA type of properties which the USDA and others might manage for research, study, or something of that nature.

I would encourage everyone in the room to continue to press for a more open process and I have to commend Mr. Diamond for recognizing that the people in the Bronx own as much of that Western public domain as the people who may in fact lease it from the little old lady in the Bronx.

And I encourage all of us to remember the fact of who owns the national real estate and not the Federal agencies who are charged with administering it on behalf of all of us. The Federal Property Review Board did not really take up the issue of the surplus lands when they last met on the 21st. They did talk at length about the good neighbor policy and the resolutions generally that have been described here.

But there are other Federal statutes that in our view were valuable when they went on the books in the early 1970's. They are equally valuable today and the resources of State and local governments are no better off than the National Government resources in many instances. And it is an area that this group, I think, should continue to give serious attention to.

Mr. **Reilly**. Additional comments or questions from the floor?

Mr. **Obnibene**. Peter Obnibene from Western Reporting. My question concerns the potential sale of public domain lands. Would there be any type of preference given to people who now hold grazing permits on BLM lands or would they in effect be forced to compete against perhaps foreign interests or corporations or what have you if those lands were in fact put up for sale?

Mr. **Burford**. I think if you were here this morning, you heard the Secretary say there were a number of questions not being addressed by the Property Review Board and which certainly cannot be addressed by the Director of the Bureau of Land Management. That happens to be one of them.

I think that is something that is of interest certainly to the grazers and certainly also to that little old lady in the Bronx. Quite frankly I do not think that there is going to be massive sales of those lands out there.

Now, with regard to the statement from the gentleman over here, those lands which are being considered for disposal as far as public domain is concerned are identified in land use plans throughout the West and they have been identified with public participation.

There is nothing secret about their location or their description or anything else. Those plans are on file throughout the West. We just aggregated some of the figures on it and are just now getting some totals together, but those plans are an ongoing process and certainly those lands have been identified as lands that should be disposed of because of remoteness, unsuitability to land pattern, or adjacency to centers of population. They have been identified by FLPMA and there is nothing secret about what lands are being considered for disposal as far as public domain lands are concerned.

Mr. TINDALL. Let me clarify for the record that I was not referring to FLPMA lands, but I was referring to GSA types of property.

Mr. BURFORD. And as far as GSA lands are concerned, if they came from the public domain, they generally revert to the public domain before they are disposed of. If they are acquired properties, then GSA takes care of their disposal.

Mr. REILLY. Any other questions or comments from the floor?

Mr. RUSSELL. I am Mike Russell with American Petroleum Institute. I have a question for the panelists in general regarding, what should I say, who has the burden of proof. While it is not really made explicit, I guess the impressions of the criteria are one of transfer of lands to the private domain only if there is some compelling reason to do so rather than the opposite, which I think is more of a historical artifact.

Let us let the private sector have any land they see fit unless there is a compelling reason not to. Would anyone care to comment on it?

Mr. McALLESTER. I think the basic responsibility and policy on that still has to be formulated by the Congress. FLPMA carries a policy directive that favors public ownership with appropriate disposal of those lands that would be more advantageous in private ownership, isolated tracts and so on, that Secretary Watt was talking about.

And the National Wildlife Refuge Administration Act carries in it a prohibition against the disposal of refuge system lands without an act of Congress or approval of the Migratory Bird Conservation Commission, so that you are seeing a debate of public policy among those who feel that there is too much Federal estate and those who see a need that Henry Diamond describes for public use of these lands.

There is probably a need for some middle ground where there is a clear identification of those areas that are more serviceable in the private system and those lands that provide for very critical and urgent public needs like the wetlands that are being destroyed very rapidly. The Nation is going to pay a horrendous price a generation down the road for some of the actions that are going on in our wetlands today.

But I don't think the policy is really clear from the Congress. There is a debate going on and this group is a part of this debate. Senator Wallop is taking a very worthwhile action in sponsoring this debate and I think that hopefully before the next Congress this will be clarified somewhat.

I don't think there are clear guidelines in the agencies at this point as to the current public policy.

Mr. HULL. I agree with what Walter said that really the only way that it can be transferred to other than field holdership is an exchange program. Any change will come before the Congress and really what the administration is doing at this time is preparing and determining what that legislation might do or include.

And when that legislation comes forward, I think there will be more opportunity to discuss it and review the details of it and find out just exactly what the meaning and what the long-term implications of it will be.

Mr. **Irland**. I think if I could comment on it from a State perspective, especially Eastern States, what you are saying is related to what Mr. Diamond said and Mr. Sunderland. They were saying in Eastern States that what is really a Federal or a public need ought to be different. You have wisps and splotches of publicly owned land and in the general private land case, it is different than if you have got 95 percent or 85 percent Federal land and a land-locked community.

It may just be that you should not be taking a western perspective of the problems applying to public lands in the East. I have not found any States that I have spoken with yet where people feel there is a major degree of public support for simply unloading State-owned lands and there are States that have millions and millions of acres of land.

It is an irony that most of these States acquired that land fully by accident and they did not want it and tried to find ways to get out of acquiring it and yet, today, those lands are important public lands and public birthrights by those citizens.

I am reminded of a remark that, when one considers the prodigious accomplishments from the profit mode in wrecking land, one hesitates to reject it as a device for conservation. And I think it is fair to say most of the publicly owned land in the Eastern States is land that in a generation or less in that status, and people remember that. People remember it very vividly.

There are people still alive who remember Stump Forest, who remember the communities that were abandoned and while it is probably not fair to draw the conclusion that private land ownership if restored in those cases would lead to the same results, I think the perception is still real. And I know Mr. Diamond has heard it and I have heard it in my work.

So I guess my answer to your question would be I perceive at the State level the reaction to your question is let us retain what we have in public ownership unless there is a clear benefit to the public from having it transferred into private ownership.

I think that probably rises in many places where there are lands that ought to be in private ownership that are in the Federal estate. So I am not absolutely against making those kinds of moves. But I guess I should recall I am speaking as a former public lands official for a State that has less public lands than any, so we are all the more kind of uptight about it.

Mr. **Reilly**. I would like at this time to thank our panelists and our respondents for opening up the subject that I think is a very important subject, examining comprehensive ways that will allow us to do a better job on the other issues on the program over the next 2 days.

We are going to reassemble here at 1:30 today for our second panel, Public Lands: Ownership by Whom and for What?

[Whereupon, at 12 noon, the hearing was recessed to reconvene at 1:30 this same day.]

AFTERNOON SESSION

Mr. **Noonan**. Good afternoon. We are going to go ahead and begin panel II, the title of which is Public Lands: Ownership by Whom and for What?

Our three panelists will each have 15 minutes to present their papers. Our respondents will each have 6 minutes for their response and questions. After that we will go to the audience for questions as well.

Our first panelist is Dr. Richard Stroup, Director of Policy Analysis, Department of the Interior. Dick.

STATEMENT OF DR. RICHARD L. STROUP, DIRECTOR, POLICY ANALYSIS, DEPARTMENT OF THE INTERIOR

Dr. **Stroup**. Thank you. I appreciate the chance to participate here. I have been asked to speak for private ownership, should we allow it. Should we allow individuals to commit laissez-faire with important land? Some of us among the economists think that the capitalist act among consenting adults will work out OK in the end.

I will be talking here in the context of the asset management program that Secretary Watt described earlier this morning. As he was at pains to explain, this is a very limited sale of Federal real estate into the private sector, a very small percentage with large categories of public domain totally excluded even from consideration.

He mentioned several categories that we described. Basically, what we are talking about here is different kinds of management, private management, public management, private sector, or the political/bureaucratic sector. What kind of competition will we see there, and what will be the result?

Competition of some sort is guaranteed. Since the apple in the Garden of Eden, we have had scarcity, and scarcity means rationing and rationing means competition. I just want to talk on these carefully selected lands that are being considered and will be considered for sale into the private sector.

We can probably expect, we cannot expect that the private and voluntary sector will generally give people what they want from those pieces of real estate, not that that sector is entitled to them, not at all. Anyone who has had any economics course lately understands very well market failure chronologies.

After all air and water, for example, are not effectively owned and more specifically do not have to be. Those kinds of resources—an example from earlier times would be the English Commons where land was not owned individually and was abused, and another example is the buffalo on the plains in the United States.

It is hard to handle some things that are not privately owned. Private tradeable rights are necessary in the market mechanism if the private sector is going to work well. What I want to suggest is if private rights and tradeable rights are established then we will have stewardship, good stewardship. That is the owner's personal wealth is his hostage to good management. It does not guarantee good management. It just gives an incentive for good management.

Let me address incentives. One. This morning we talked about the current national grasslands as lands that once were farmed. They were not managed properly and ended up failing in fairly, large quantities, particularly in the north central part of the United States.

Notice, however, that if land is mismanaged by that and ruined it is the owner's wealth that is destroyed and the value of that land declines. Now, obviously losers of wealth can be bailed out by the Federal Government and other entities. It is their own wealth that is lost subject to some bail-out.

What really happened, by the way, in the northern plains, especially during those years, was that the land was settled during an unusually wet period. We know that was an unusually wet period. The productive capacity of the land was overestimated because people thought that productivity would continue, but they were wrong.

We should probably also note that when Government entities allocated water from the Colorado River during and after that experience they greatly over-allocated the water in the Colorado River for exactly the same reasoning. They did not have any direction. No one in the United States knew at that time that we had gone through a series of unusually wet years in those lands.

The fact remains when private land is mismanaged for whatever reason, the owner's fault or somebody else's fault, it is the owner's wealth that is at stake. And important, I think, is number two, which is they encouraged the best use of lands as people see and they encourage it as a response to change. It is really important I think to note that vastly different management is appropriate at different times on the very same piece of land.

What is appropriate in one decade may be very inappropriate decades later. Think, for example, about the use of woods and wood lots on the east coast during colonial years. Wood was vastly abundant at the time. Standing timber was a negative value in colonial times. Standing timber had to be cleared, burned and somehow gotten rid of if people were to live and establish farms.

Notice also, at the very same time in England, wood was a very dear commodity. If that wood could have been transported to England, it would have been tremendously valuable. Not only does appropriate management on the same land differ across time, it differs across States at the same time.

For the owner of a piece of land to mismanage or fail to see what was appropriate at the time and at that place is for him to sacrifice his own wealth.

Now, should we respond to changing demands? Should what was appropriate before be continued into the future? I would argue, of course, not necessarily. I would say if you put lots of barriers up to change you may run into problems. Ask yourself the following question, before people in the United States could imagine owning an automobile and running down nonexistent highways, before anyone could imagine smooth cars, before the UAW existed, before General Motors and Ford existed, what if the buggy makers and people who made saddles and so forth, what if they had been able to stop or hold up for a few years the development of the automobile in this country, what would have been lost?

What if the resources needed by the automobile industry had to be gotten by allocation from the private? So what if? The point is to change we are allowed to hold out for a few years. What would have happened? I don't know. It is an interesting question.

I want to suggest that private lands not only yield commodity, that the owner not only has an incentive to look at commodity value, but also at amenity and environmental value. We can look, for example, at the kinds of resorts that have sprung up in the last few years in the West, not coincidentally at all, I think, that those resorts increased in size and quantity and often in quality as well, right about the same time earth day was being celebrated.

The fact is that as our country got more wealthy, the demand for environment as amenity resources rose. As it rose the Government got very interested in environmental policy and energy and so did the private sector at the same time. Demands in both sectors were rising due largely to an increase in the economic development in this country.

If you look at poor individuals and if you look at poor countries, the demand for environmental quality and amenities is substantially less. How does the private sector provide amenity in environmental resources?

What about something like wetlands, that is where the wetlands may be critical habitats to water fowl and where the water fowl migrate? It is kind of like the old buffalo problem, isn't it. A migratory resource is considered by most economists not to be very well handled in the private market. Who wants to provide wildlife habitat to wildlife that is not owned by that individual?

So then we have a problem here. Yes, we do have a problem here if land is private. But I want to point out, in Canada, Ducks Unlimited. That organization alone has millions of acres of wetlands, critical to wildlife habitat protected on a voluntary basis. They go out and buy easements. They make all sorts of voluntary arrangements to protect those wetlands, all voluntarily, all as far as I know within the private sector.

I might add that is without any tax benefits as far as people who donate the land or sell the easements to Ducks Unlimited. That is several million acres, all private, all voluntary and that is even without the tax incentive that we have here.

These things can be handled. Optimally, I don't know, but they can be handled privately. Does the market always preserve? Can we always count on the market to preserve environmental and amenity resources? Not always. As I mentioned before if the demand is there it happens. If the demand is not there it does not happen.

Is not the same thing true in the political sector, in the public sector? I guess we want to hope so. What the people demand is responded to in the public sector and in the private sector alike. The demand for environmental amenity resources has grown substantially and both sectors have responded rather thoroughly.

What about fairness? Another question often comes up: If these lands are privatized how is the ordinary person going to enjoy them? Will not prices rise and the citizens be excluded from those lands? There are two answers to that. First, that if the lands are sold, these few million acres, carefully selected acres, that we are talking about, the public treasury captures the benefit as seen by the high bidder presumably.

When one buys land one is buying the productivity of that land into the future. The public treasury captures those benefits if the land is sold. The second answer is the equity question. Where is the common citizen going to get better service? Where is the little old lady in the Bronx going to get a better treatment? At the U.S. Post Office? Perhaps so, or at McDonalds or at Woodies. It is not all clear that the common citizen will get less attention from the private sector than from the public.

Ask yourself about the big private assets. Consider, for example, the Empire State Building. Most of us in this room could not conceive of buying the Empire State Building. Does that mean we are excluded or does that mean we don't get any benefits from it? I think not. Those of us who can afford and would demand and be willing to pay for the majestic surroundings, not shared with anybody else, can go ahead, if they have the money, and buy a large palatial suite of offices in the Empire State Building.

But the rest of us can probably rent a lunch counter seat pretty cheaply, those of us who are willing to put up with less palatial circumstances. Notice that the register serves very well in the market. Notice also that you pay for it. Proceeds from the sales of public lands, once again, would go to the public treasury, an important factor.

For those who think that equality is built more into the public sector than the private, I suggest a quality experiment. Go to your county courthouse and look how parking spaces at the courthouse are allocated. Are those allocated equally? Will you the common citizen and I the common citizen have equal access to parking spaces at the county courthouse?

My prediction is, where I have been anyway, is that the highest officials get the closest parking spaces. The next highest officials would get the next closest parking spaces and the lower officials would get the next closest parking spaces. Whatever is left will be allocated to you and me, despite the fact that you and I turn over each of those parking spaces far more often each day. The customers of the courthouse turn over those parking spaces much more frequently and it would make much more sense from an economist's point of view to allocate the close spaces to the people who save 50 steps 100 times a day rather than twice a day.

See how those parking spaces are allocated in the courthouse for the public sector and now take a trip from there to your favorite large shopping center and see how the parking spaces are allocated. I think you will find that even the high officials of the firms running the shopping center will be parking in the outer rim, because they want to please their customers.

If they don't please their customers they will go elsewhere. And they will walk further once or twice a day to let the key parking spaces go to you and me, because in the end we pay for it by patronizing.

I believe I just finished up. Thank you.

[The prepared statement of Dr. Stroup follows:)

IN DEFENSE OF ASSET MANAGEMENT: THE PRIVATIZATION COMPONENT

Richard L. Stroup
Director, Office of Policy Analysis

The Federal Government owns a third of the Nation's land. A small fraction of this total domain is being selected and prepared for sale. Even this small fraction however, will amount to several million acres and will yield several billion dollars in revenue for the Treasury. The President's Asset Management Program will do more than raise revenue: it will increase the efficiency with which the lands are used and will distribute those increased benefits more broadly among all citizens. Net gains in efficiency and equity will be the result. As its title suggests, the program really is one aimed at improving the management of the Nation's real property assets.

"Privatization" is the word most frequently used in the media to describe the program. Indeed a key component of the program does involve putting large amounts of land (but indeed a carefully selected small proportion of the Federal holdings) up for sale to the private sector. Several commentators have objected strongly to the very notion of privatization. A large number of the prominent criticisms are based on caricatures of what private ownership means, and results to be expected from it. This paper is intended to provide an explanation of the rationale of the Asset Management Program. Following that will be a discussion of criticisms most frequently heard regarding the privatization component of asset management.

The Rationale for Privatization

There are a number of reasons to expect that productivity on selected Federal lands could be increased by privatization. Lower costs and better management can increase the productivity not only of material outputs but also the preservation of amenity and recreation values. In fact the private demand for amenity and recreation components of some of these Federal lands are probably growing faster than the demands for material outputs from the same lands. Increasingly, many large landholders find recreation access and enhancement the most profitable part of their business. More importantly, the fact that private ownership provides for individuals both the incentive and the ability to imaginatively conduct multiple use strategies in a flexible and efficent manner should be a key to increasing productivity in a manner consistent with maintenance of aesthetic values.

The twin key requirements for a successful organization are 1) good information and a constant flow of feedback on results, and 2) decision maker accountability, so that decision makers have an incentive to seek out and heed the appropriate information. When rights to a resource such as land are held privately, the opportunties for profit and loss provide the incentive. The value of the resource depends directly on its management, and when management increases its value, the owner receives the resulting increase in wealth. If the owner of the resource is blind to the more valuable use of the resource, a person, group, or firm with better vision can come along and offer more for the resource than it is worth to the current owner. By moving the resource to a higher value use, the new owner profits; the value of the resource has increased, and with it the wealth of the owner.

It is imperative that we recognize that when a resource is owned privately, the wealth of the owner is in effect a hostage to the good management of that resource. For example if the owner of a ranch overgrazes the land in a short-sighted manner, causing erosion, the market value of the land falls. The very day that a prospective owner or an appraiser can see the reduced productivity of the land (whether in grazing or amenity values) is the day the wealth of the owner falls. After all, the value of a piece of land is simply the highest price any person or group of people will pay for the stream of productivity, both material and asthetic, capable of being produced by the land. Increasingly, the amenity values offered by undeveloped land determine the land's highest and best use. In large parts of the Nation, property values are running far ahead of what can be supported by agricultural production. People are increasingly willing to pay for amenities, and any owner who destroys such value is decreasing his own wealth.

When management from multiple use is profitable (even if new and uncomfortable) the private owner has a real incentive to adapt. For example timber firms are finding that managing their lands for hunting, camping, and other outdoor recreation use can be very profitable. Making certain of their land's attractiveness for second homesites, each sold with restrictive convenants, was another profitable alternative for some. In a large part of west Texas, where very little public land exists, ranchers find that managing their land for game animals adds more to their revenue than all the traditional crops and livestock grazing do. Some merely make minor adjustments in order to do both, while others manage more intensively for recreation. In some cases exotic game animals are imported from Africa and elaborate fencing is used. Others cater to hunters with smaller budgets. In each case the incentive is to find an optimal mix, and adjust that mix over time. And a great many ranchers are doing exactly that. Both they and the consuming public gain.

We should not be surprised that private land management is extremely adaptive, providing services to a broad spectrum of consumers. After all, the Astrodome in

Houston welcomes an exordinarily complex array of users. So does the Empire State building. In both cases, masses of people are accommodated, but so are extremely wealthy individuals seeking special attention. Bleacher seats and private boxes are provided; plush office space and lunch counter seats are too. Of course those who want majestic surroundings but do not want to share it with others must pay more. Not only does the market provide information and incentives to the supplier; the user also is given both information and the incentives to heed that information, in the form of market prices he must pay.

Services for natural resources are not free. This is as true of amenity services as it is of material goods and services. Ever since the Garden of Eden, scarcity has been with us. We simply cannot have all of what we would like. Rights to resources are privately held and exchangeable, prices bid and asked are the signals which draw the sources into the most highly valued uses, giving both producers and consumers the information and the incentives to act as if they cared about the desires of others. Of course the incentives are in addition to whatever good will and charitable urges they may have. In a market setting, he who does good (for others) does well (for himself).

Problems With the Private Sector

No honest explanation of private sector management could be complete without a discussion of market failure. In a world of human fallibility and imperfect information, no system of organization is without its flaws. The market system, with private property rights, is no exception.

A market system breaks down precisely when private rights are not well defined, not easily defended, or are not transferable under terms desired by the owner.

For natural resources, this most commonly occurs when certain costs or benefits of the resource do not accrue to the owner. This condition commonly is known as "externality." For example one cost of overgrazing a piece of land might be that erosion pollutes a creek running through the land. If the pollution harms fish down stream from the owner's property, or if the owner if unable to benefit from preserving fish in the creek at all, then that portion of added costs from grazing might be overlooked by the landowner. He would have little incentive to reduce overgrazing for those reasons. Similiarly, if deer which could use his ranch for forage and cover are not owned by him, and if he cannot benefit from encouragement of the deer herd, then he may be unwilling to incur even small costs to aid the deer population. This is a case of "external benefit." An extreme case of external benefit is the public good. A private party owning Mt. Rainier would have trouble benefiting from preserving its pristine appearance for the benefit of Seattle residents. Since the owner could not exclude those not paying for the view of the mountain, too little weight might be given to preservation of that view. Another form of market failure, although seldom important in the case of land or natural resources is the problem of monopoly. In that case the owner has an incentive to produce too little, in order that the price of what is produced remains higher.

Whenever there is market failure, there is reason to ask whether governmental control, either through regulations or ownerhip of the resource, might not improve the situation. For example in the case of water pollution we bring in the EPA to help the Government regulate the problem. We also have Mt. Rainier National Park to provide public ownership of the Mountain and its surrounding environment. We feel that public ownership is superior in that case.

Unfortunately, the existence of market failure does not guarantee that Government intervention will improve the situation. Even in the case of water pollution on Mt. Rainier, few would argue that Government should have no role. Still, Government also fails the test of perfection. To understand why some lands may be better handled privately even when markets are imperfect, we must apply the same critical reasoning to the governmental process as we do to the private market process. When we do so, Government is also shown to be a fallible institution.

Analysis of Government Failure

Just as markets can be shown to fail when the decision maker is not held fully accountable for his actions, the same can be seen to apply in the case of Government ownership or control. In the private sector it is the privately-owned property right which is intended to connect the authority to act, with full responsibility for the action. That mechanism is almost totally missing in the public sector. In its place are formalized bureaucratic controls (red tape) and political mechanisms such as elections. Unfortunately, neither political nor bureaucratic control provides full information and adequate incentives to producers and consumers. The problems with public sector management and ownership can be summarized in five categories.

First, in a democracy even the brighter voters tend to be rationally ignorant of even the most important policy matters. This does not suggest that they are not intelligent; instead they are merely uninformed. In fact dozens of polls, including one multimillion dollar study done for Congress, confirm that the average American voter cannot even name his Congressman. Briefly, the reason for rational ignorance on the part of voters who are perfectly intelligent has to do with the lack of individual control. Consider a private sector analogue, a rancher's knowledge of the weather. At Montana State University where I normally teach, the sons and daughters of ranchers come to get agricultural degrees, so they can return to run the family ranch. Most would like to maximize their future income. They generally take some fairly efficient combinations of college courses to help them do so. However they normally do not stress the one factor which will be the most important determinant of their future income in any given year—the weather. Even though the weather will be critical, they fail to study it simply because they cannot control it. So they study instead tax laws, feeds and feeding, soils, animal science, and accounting, which help them make decisions they control. It is quite rational. They remain largely ignorant about meteorology since they will not be in a position to do much about it anyway. In a similar fashion, the average voter cannot even name his Congressman. Even though Congressional decisions are absolutely vital, voters remain ignorant about most issues, and most candidates for public office. That is rational simply because no matter how informed the individual is, his vote is unlikely to be the decisive one in any election. A mistake by him on election day will almost surely not matter. Even if by some unusual circumstance it did, he would have paid the full cost of the information while sharing the benefit of his more informed vote with everyone else being governed. The result is predictable: an intelligent but rationally uninformed body of voters on election day.

This point is so basic that further analogy is probably worthwhile. Consider the individual's relationship with Congress along side his relationship with General Motors. In both cases, the average individual has very little impact. Dollar votes on the one hand and polling place votes on the other have a tiny marginal impact on those two giant institutions. Yet we can predict that the individual will put much more emphasis on making an informed dollar vote regarding GM than an informed vote on election day. Why? Because in the case of buying an automobile or a refrigerator, individuals' "dollar votes" are decisive. The right decision means that the individual gets what is best for him. The wrong decision by that individual will be paid for almost entirely by him. He pays the full cost of becoming more informed, but he also gets virtually all of the benefit. By contrast, a voter pays the full cost of his becoming better informed, yet in that arena he is almost never decisive. If he pulls the wrong lever in the voting booth, it almost certainly will make no difference. Thus we should not be surprised that dollar votes are typically cast with much more care than are political votes. The citizen is held much more accountable in the former case than in the latter. Thus the signal reaching GM is typically much better thought through by the "voter" than is the information provided to Congress in elections. This is true despite the fact that for most individuals, decisions made in Congress are far more important than decisions made by GM.

The second category of problems with governmental control, arguing in favor of the private alternative, has to do with the power of special interests. Since most voters are rationally ignorant about most issues, a special interest group can have a great deal of influence on any particular issue. For example in the case of a national forest, we can expect that the local timber buyers and processors will be keenly interested, informed, and influential on the management of that forest. Similiarly if certain recreational users are well organized, their special interest will also be represented. However the vast majority of citizens will be represented rather weakly. They will never know how their Congressman voted on policy regarding the national forest. To be successful, any politician or political appointee must pay close attention to organized special interest groups. To pay more attention to "the public interest" will not be conducive to political success. Politicians who will not "play ball" with special interest groups tend to be replaced by those who will.

The third problem with Government control could be called the "shortsightedness effect." The politician who looks beyond the next election is likely to be replaced by someone who can promise short run, more certain benefits. Unlike the case of private property rights, where future productivity is reflected in current resource prices offered by potential buyers, future payoffs of the public sector are very difficult to capture currently. After all, future voters do not vote today. If today's voters feel disadvantaged by a politician, they will not reelect him. By contrast in the private sector, the resource owner who disadvantages current buyers by holding something off the market today, will be rewarded by being able to sell that item later. Even if a whole series of speculators is required to buy and resell the asset over and over, each benefiting from its rise in value, the effect is to give future buyers an indirect voice in today's market. This is true even if today's resource owners don't really care about the future beneficiaries, but only about rising resource prices instead. Only if current voters are willing to disadvantage themselves to benefit the future, will longsightness payoff in the political arena. In the private arena, charitable instincts are reinforced by resource prices which rise over time. To hold a resource whose rise in value outpaces other investments (the ones forsaken by holding this resource away from current use) is to profit. The owner does well by doing a good thing.

A fourth reason to favor privatization over governmental control has to do with the incentive for internal efficiency. With governmental control, the decision maker is seldom in a position to personally gain from producing more from the same inputs, or from cutting the cost of a given output. We should not be terribly surprised to see inefficient public projects. Decision makers are simply not held accountable as they would be in the private sector by prices bid and asked. If organized special interest can benefit from a program, it frequently is politically astute to support that program even if costs far exceed the benefits. After all, the costs will be spread across all citizens, most of whom will not even know what is happening. It is extremely difficult for even a team of professionals to demonstrate whether or not a bureau is being efficient. The concentrated beneficiaries, however, do provide political rewards in return for favors to them. Inefficient management of grazing lands, forests, and water project investments should thus come as no surprise.

A fifth and final category of problems might be termed the "Bundle purchase problem." Even a well-informed voter has a real problem in expressing his preferences on components of policy in the public sector. My Congressman will make perhaps 2,000 decisions on my behalf in the next year. Suppose that I very much like his stand on forest management, but do not like his stand on grazing land. Or suppose his public lands policy is fine with me, but his defense policy is not. What am I to do? I must vote for one candidate to represent me on the entire bundle—all 2,000 issues. Unlike the private sector, where I can buy my shoes at one store, my shirts at another, and my food at a number of others, I am forced to "buy" an incredibly large and complex package of political stands from one individual politician or another. I cannot pick and choose. Each voter's preferences are expressed very imprecisely in the voting booth.

All five of these characteristics of the Government sector argue that even though the market is imperfect, privatization will sometimes be preferred. Clearly private individuals do make errors. However private rights, if they are exchangeable, do tend to hold each decision maker accountable. As quickly as any mistake is discovered, the discoverer has an incentive to act properly on the new information. That is how profit is produced—moving resources from where they are valued less to where they are valued more, and doing it ahead of others in the market. Similarly, economic losses are exactly the opposite—a signal that resources have moved from where they are valued more to where they are valued less. Obviously, losses are just as important as profits in the market process, providing a "release" mechanism, freeing resources from unsuccessful decision makers and making them more available to others. Profits, of course, provide enhanced command over resources to successful decision makers.

Mistaken Criticisms of Privatization

So far we have seen that both private markets and governmental control are imperfect. It is realistic to criticize each, and we can in fact predict the circumstances under which each will fail, and some of the results of each type of failure. In addition to the valid criticisms of each system, listed above, current critics of the privatization component of the Asset Management Program often voice a number of mistaken criticisms of the private sector. Several of these are worthy of discussion.

Private ownership is often criticized as being environmentally insensitive. Afterall, according to this line of reasoning, private owners are frequently concerned with profit, not with environmental quality. What these critics fail to recognize is that when individuals are willing to pay (make sacrifices) for environmental quality, as they must if democratic Government is to have any positive influence, then they will also pay personally in order to enjoy environmental amenities. Thus we see environmentally sensitive and controlled resort developments assembled by putting together entire mountain valleys, where control is gained of all of the relevant surrounding land. The land can then be resold in small parcels after carefully drawn covenants are placed upon each parcel. Every parcel rises in value because each buyer knows that every nearby property owner must abide by rules which maintain and provide a high quality environment. People willing to vote for environmental quality will also be willing to buy it for themselves and as a saleable investment. Just as shopping centers sprang up to provide "free" parking and other "amenties" for shoppers, privately planned communities and recreation developments have sprung up to cash in on the increased demand for environmental and amenity values. Of course some big landowners have failed to follow these market signals from time to time. Some forest industry firms for example have carelessly logged their own lands. However in doing so, and in failing to preserve environmental values, they substantially lower the value of their lands and the production of recreational services and second homesites. Their wealth was decreased accordingly. Such mistakes reduce the market power of those firms. More farsighted firms have in fact profited from careful management. Over time they will tend to displace losers in control of natural resources. Profitable firms expand while losses discipline and shrink the rest.

Direct liability is another way in which private property rights hold decision makers accountable. Consider for example the Love Canal fiasco. When Hooker Chemical was forced (by threat of eminent domain) to dispose of its Love Canal chemical storage site, it took very great pains to announce in public and in the sale document that the Canal area was extremely dangerous. It tried to avoid the sale in the first place, but once forced to sell, Hooker tried to protect itself legally by announcing publicly and in the transfer documents that it was divesting itself of a very dangerous property. The problems were described openly and forcefully. However the School Board which received the property was in a very different position. School Board members, unlike the owners of Hooker Chemical, were not personally exposed to legal liability. Their actions were understandably, but also tragically, inept by comparison. The result of the forced sale by Hooker and subsequent mismanagement by public officials led to well-known results. Of course the media chose to emphasize not the care which Hooker had taken nor the unwillingness of their sale of land, but instead the fact that they had initially dumped the waste (carefully, on their own land) which eventually led to the problems. It was simply assumed by most people and the general public that Hooker had been negligent. By contrast, the facts of the matter are that it was a public body which was careless in its management. Private sector liability probably would have prevented the Love Canal problem. The physical containment of chemicals did not break down until the School Board allowed excavation for construction. The claim here is not that the private sector individuals were smarter or better intended. Not at all; instead, private ownership provides a whole different set of incentives for the decision maker. Even if Hooker officials cared not one bit about the future of that land, they certainly had an incentive to care about their legal liabilities. Their actions demonstrated that fact, but were overridden by public sector officials who faced very different incentives.

A second mistaken criticism of privatization holds that "only the wealthy will enjoy lands which are made private." One has only to look at such a huge and valuable asset as the Empire State building to realize that rich and poor alike can benefit from its services. The same is true of most Manhattan real estate: elegant restaurants, fast food chains, broadway theaters, and pornographic movie houses share those extemely valuable acres. All tastes and all income levels are catered to. Rich people tend to get more of course, and they pay for it. Of course rich people tend to be far better represented in Government as well. From tax breaks to the provision of art, National Parks, and the humanities, the rich tend to be subsidized in the political setting. (National Park visitors, for example, tend to have incomes far above average.) There has never been a sizeable political system in the world where wealth and political power were not strongly correlated.

A third criticism voiced by critics of privatization has to do with concern for future generations. Will the pursuit of short-run profits cause short-run decisions to be made in the private sector? As suggested above, transferable property rights cause current decision makers to act as if they cared about the future, even if in fact they care only about today's profits. Even if today's cash flow would be enhanced by failing to maintain an asset, the value of that asset immediately falls to reflect any decline now in its future productivity or worth. By contrast, a great many news articles lately have detailed the ways in which city governments, pressed for funds, kept services going while neglecting to maintain capital assets. Subway rails, sewer lines, and roads were allowed to deteriorate, causing serious problems in future years but saving a few dollars now. In the private sector this would be costly behavior even in the short run. To save a thousand dollar expenditure at the cost of a two thousand dollar reduction in asset value is privately foolish. However in the public sector, to raise the thousand dollars by taxation is painful to incumbents, while the future expenditure of $2,000 in resulting repairs is likely to be in the future alderman's problem. In the private sector, a truly shortsighted individual simply sells out. The asset is simply more valuable to someone else than to the shortsighted individual. The more farsighted individual sees both short and long-run benefits and costs. Rather than obtain a little more profit now at the expense of a larger decline in asset value, it pays the shortsighted individual to borrow or to sell out to one who makes the best eventual use of the asset. This procedure may result in a whole series of private owners overtime, but each has the incentive to act as if he cared about the future.

Summary

In brief, the privatization component of the Asset Management Program can be defended as a logical, efficient, and fowardlooking part of the Federal Government's responsibility to the Nation. Privatization is a useful tool in certain cases, to ensure that current and future resource users, desiring both material and environmental services, can better be served. In many cases a private owner generally is held much more accountable, both for positive and negative results, than is the public sector representative of "the public interest." Both logic and the weight of real world evidence suggest that privatization, selectively and carefully applied, will benefit nearly everyone.

Mr. NOONAN. I would encourage the panelists to once in a while look out of the corner of their eye to the lights.

Dick, thank you for an articulate commentary on the rationale for privatization. Our next panelist is Mr. Michael Harvey, chief counsel, minority, Senate Committee on Energy and Natural Resources. Mike.

STATEMENT OF D. MICHAEL HARVEY, CHIEF COUNSEL FOR THE MINORITY, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. HARVEY. Thank you, Pat. I think my role here today is to represent the little old lady from the Bronx. I am not at all sure she is going to be real pleased with what I have to say. I hope she is not carrying an umbrella today.

I was interested by Rick's reference to the buggy whip company. I worked for a company that was started by somebody who was running that business, the Eastman Kodak Co. George Eastman thought the idea of the photography business was too strong and made buggy whips instead of money and instead of trying to keep the automobile from coming along, he decided he would get into something to make more money.

During the 1970's Congress established significant new policies for management of the public lands. These policies just now barely are beginning to be implemented. I want to stress that. At the same time, some people question the very concept of Federal land ownership that many thought after long debate from the mid-1960's up through the report of the public land laws of 1976 had been settled.

Beginning in the late 1970's the Sagebrush Rebellion called for Federal lands to be transferred to the States. After that notion failed to take hold many of the rebels now called for privatization of the public lands.

It is not at all clear to me precisely what is meant by that term. It appears to be used in two different ways. One group, I think, regards this as a philosophical issue that management in private ownership is apparently better than management in the public ownership. This group would in effect ultimately, I think, seek transfer essentially of almost all of the lands to private individuals, although the size, timing and terms of these transfers are not specified.

Others seem to be using it as a synonym for the so-called asset management program, which was recently started by the administration, which in my opinion is much more geared to a short-term effort to reduce the Federal deficit through the sale of lands that under existing law would be sold anyway or should be sold.

Others are proposing, such as my friend Marion Clawson, more imaginative ways to increase private control. We have done the sales bit before, afterall. My views on this issue are conservative ones. Why do I say they are conservative? First of all, because I prefer evolution to revolution. Second, I believe in private use of public resources subject to market forces, but also believe that public ownership protects from generation to generation vital, long-term resources, wilderness, watershed, aquifers, for example, which the marketplace does not recognize.

Third, I believe in conservation of natural resources, which I define as wise use. I believe that means trying to balance all the different and often conflicting uses that are sought on public lands with the ultimate principle of conflict resolution being that expressed by Gifford Pinchot almost 80 years ago that: The question will always be decided from the standpoint of the greatest good of the greatest number in the long run.

Finally, I think my views are conservative because I believe that land, any kind of land, public land in particular is more than money. It has values that cannot be measured by money and public lands, indeed, are more than just real estate.

In my paper, which you fortunately are not going to have read to you in its entirety, I discuss the concept brought up originally by the Public Land Law Review Commission for analyzing public policies for the public lands, dealing with identifying six groups that make up, if you will, the general public. We always talk about the general public, but there are obviously lots of different people with different ideas.

I will not go into detail about this orally, but simply let you know that I think you have to look at these kinds of issues from the viewpoint of the national public, the little old lady in the Bronx, the regional public, the guy who lives in Los Angeles and he only has about a 2-hour drive from California to the desert.

The Federal as a sovereign, doing things as a sovereign, defending the Nation, for example, trying to make the economy run better. The Federal Government as a proprietor, which is just another way of trying to do things that the landowners would like to do.

State and local governments have their own interests.

And, finally, the users of the public lands, whether they are for commercial purposes, ranchers, miners, et cetera, for people out there for private recreation or what have you.

Let me skip now to a discussion of the Federal Land Policy and Management Act, which as I say is just barely getting underway. This was probably the most significant public land law for BLM administered lands, in any event, of this century. It set up policies, procedures, criteria, for example, for sales and exchanges.

Clearly, Congress anticipated that significant acreage would be transferred out of Federal ownership through FLPMA. Estimates in the 1960's that were available to this committee and others indicated that at least 5 million acres on the first go-around would probably meet the criteria of FLPMA.

I was interested this morning when Secretary Watt said that their first quick look at the BLM lands said 4 million acres, which is not too very different, as a matter of fact, from what we did in 1960. FLPMA did not specify which uses would be allowed on which areas. Rather, it set out a planning process to be used for making land use decisions, and general principles to be followed in those decisions.

The basic principles include decisions based on inventory and land use planning; protection of the environment; receipt of fair market value for private use of public resources; and close cooperation with State and local governments and local citizens and consistency with State and local land use plans.

It is interesting to me to note that FLPMA was proposed by Western Republicans in the executive branch. The congressional leaders on the measure were all westerners. And any one Senator could have stopped the passage of FLPMA the night it was passed on the last night of the 94th Congress. One Senator's rejection would have stopped passage of that law. No one objected.

There was a general agreement, in other words, on the broad principles. However, when the Carter administration started implementing this law fierce debate broke out over the choice between development and preservation. I won't go into all of the specifics of that. Suffice it to say that that debate between environmental protection and resource development ignored, in my view, the central issue they should have been talking about: that is man's survival does not depend upon one or the other; it depends on both.

FLPMA recognized that. It does not mandate preservation or development. It mandates a process for arriving at decisions.

Where should we go from here? I think that we should start by using, as I said, the FLPMA processes that have barely begun to be used. First, we must implement the plan and decisionmaking process today. We don't need new public land laws. We may very well need to streamline existing regulations and procedures based on experience. Existing law allows this.

There is no doubt that the law allows planning and management actions to be simpler and faster and more efficient than many of the present procedures. We do need to get on with making the hundreds of thousands, and I mean that literally, hundreds of thousands of individual decisions that are required every year to manage public lands.

Some of those decisions will be, I am sure and in fact should be, sell or exchange public lands. Those decisions must be based on full information on resource capability and on the cost and benefits of alternative uses. There must be full representation of the conflicting interests and viewpoints. This means not only interest on timber, mining, recreation, and wildlife, but also in behalf of urban consumers, State and local governments, local industries, and neighboring landowners.

Once made the decisions should be carried out so that land users can safely make investment decisions. Most users are ready and willing to take steps, sometimes costly ones, to prevent or minimize damage to the land and the environment from their activities. They need to know what is required and believe that the requirements will be enforced reasonably but promptly.

Second, the executive branch and the Congress must make a commitment to the FLPMA processes. And I would suggest that so far that commitment has not totally been made. This means providing adequate manpower and funding so that professional land managers can do their job properly.

It also requires delegation of decisionmaking authority to the lowest possible level in the field. Congress and political appointees in the executive branch must provide adequate guidance for exercise of that authority.

They must also refrain from second-guessing decisions of on-the-ground managers unless they are clearly inconsistent with established law, regulations, or policy. That problem, in my opinion, is the cause of most of the delay in public land management in the last 5 or 6 years. On-the-ground managers are hesitant to decide and they have all of the information they need in front of them. They hesitate to make a decision for fear of being beat around the head by someone here on the Hill or someone down in their own department.

A large portion of the public lands budget consists of items that any responsible private business would treat as capital investments, not annual operating costs. It is time that the Federal Government do so too. A portion of the annual income from these lands should be set aside as a public land capital improvement fund.

Third, in an era of reduced Federal budgets and a widespread desire to return power to the States we should take full advantage of all the Federal-State cooperative provisions of public land policy. These include consistency of Federal management plans and programs with State and local land use planning; opportunities for State and local governments to acquire public lands needed for public purposes frequently at little or no cost.

Finally, and most importantly, we must reduce the polarization that has characterized much of the recent public land policy debate. Cecil Andrus called traditional public land users the rape, ruin, and run boys. I am sure that many third generation western ranchers too appreciate that particular revelation.

James Watt has referred to toadstool worshippers and environmental extremists who are always selfish, usually easterners and possibly Communists. These and other powerful statements make good press, but they don't help make good public land use decisions.

We all must recognize that Congress did not side with any user group. They took the middle ground not just out of political expediency but out of recognition of realization. Public land issues are never black and white. Neither are they simply development versus preservation; east versus west; urban versus rural; or Federal versus State; or public versus private.

All interested parties must be willing to enter into dialog, not diatribe. We need reasoned responses not knee-jerk reactions; cooperation, not confrontation or litigation. All must be willing to work within the established process to make their arguments and resolve their differences. To ignore them or to propose radical changes in the existing principles is, in my view, to invite suspicion, stridency, and eventually, I think, stalemate.

[The prepared statement of Mr. Harvey follows:]

WORKSHOP ON LAND PROTECTION AND MANAGEMENT
SESSION ON
PUBLIC LANDS: OWNERSHIP - BY WHOM AND FOR WHAT?
A CONSERVATIVE VIEW

by

D. MICHAEL HARVEY

> "The astounding value of the public domain lies in uses that have been overlooked, for the most part... as deterrents to floods, uses for natural storage for irrigated lands, uses for game and recreation, uses for forage and range, uses as forest areas, and finally uses as gigantic regulators of climatic conditions...the value of these lands is such that the welfare and prosperity of the people of a mighty empire all depend upon the fidelity with which the lands we call the public domain are administered."
>
> Representative Burton French
> (R-Idaho) 1934

The public lands of the United States have always provided the arena in which we Americans have struggled to fulfill our dreams. Even today dreams of wealth, adventure, and escape are still being acted out on these farflung lands. These lands and the dreams - fulfilled and unfulfilled - which they foster are a part of our national heritage. What we do with them tells a great deal about what we are - what we care for - and what is to become of us as a nation.

During the 1970's Congress established significant new policies for management of the public lands. These policies are just now beginning to be fully implemented.

At the same time, some people question the very concept of Federal land ownership. Beginning in the late 1970's the Sagebrush Rebellion called for Federal lands to be given to the States. After that notion failed to take hold, many of the Rebels now call for "privatization" of the public lands. Apparently, this means transfer of title to all the lands to private individuals, although the size, timing, and terms of these transfers are not specified. Nor is it clear who will be eligible to purchase or what will happen to existing users.

This uncertainty is compounded by the fact that Administration representatives use the term "privatization" in two ways. One usage refers to the accelerated sales program -- asset management -- apparently primarily designed to raise revenue "to retire the national debt." The other usage reflects a philosophical view that private ownership of Federal lands would result in net national economic benefits because private management is more efficient than public management.

Other people, including my friend Marion Clawson, have suggested other, more imaginative ways to increase private control of currently public lands.

We are here today to discuss alternative future policies for the public lands -- some of which would involve radical change. My views on this issue are conservative.

Why conservative? First, I prefer evolution to revolution. Second, I believe in private use of public resources subject to market forces, but also believe that public ownership protects from generation to generation vital long-term resource values which the marketplace does not recognize. Third, I believe that land in general, and public land in particular, has values that are not, and indeed cannot be, measured in real estate sales. Public lands have values that cannot be measured in dollars. Fourth, I believe in conservation of natural resources, which I define as "wise use". I believe that wise use of our natural resources must attempt to balance all the different, and sometimes conflicting, uses with the ultimate principle of conflict resolution being that expressed by Gifford Pinchot almost 80 years ago -- "the question will always be decided from the standpoint of the greatest good of the greatest number in the long run."

Pinchot's famous maxim was rephrased by Congress in the Public Land Law Review Commission Act in 1964 to call for public land management to achieve "the maximum benefit for the general public". Of course, it is not so easy to determine what that maximum benefit is in any given situation.

I find the Commission's identification of six "publics" that together make up the general public to be useful tools in analyzing public land policy issues. These are:

(1) The National Public;
(2) The Regional Public;
(3) The Federal Government as Sovereign;
(4) The Federal Government as Proprietor;
(5) State and Local Governments; and
(6) The Users of the Public Lands

What are the interests of those "publics"?

The National Public

Although the public lands are not distributed proportionally throughout the Nation, they and their resources belong to all the people of the United States.

The national public has an interest in reducing the burden on taxpayers generally either by maximizing the net revenue from the public lands, or by assuring more efficient management, or both. The national public also has an interest that consumer goods and services derived from the public lands will be made available at the lowest possible price consistent with good conservation practices.

The national public is concerned that the public lands should contribute to the maintenance of a quality environment and that the public lands should be managed to enhance human and social values.

While the interests of the national public are not associated with any particular kind of use of the public lands, the national public is concerned that people who do use the public lands be treated equally.

The Regional Public

Those who live and work on and near the public lands have separate, identifiable and special concerns that go beyond their interest as members of the national public. They have a strong desire that these lands contribute meaningfully to the quality of the environment in which they live.

Taxes on private property ownership are a major source of revenue in public land states, particularly at the local level. It is in the regional public interest to have the Federal Government, as a landowner, pay its fair share of the costs of adequate local and state governmental services.

Public lands and their resources are an important part of the economic base in at least 22 states. There clearly is a regional public interest in laws and policies which permit public lands and their resources to contribute to regional growth, development, and employment.

The Federal Government as Sovereign

As a matter of constitutional law, there is no legal significance in the different roles of the Federal Government as sovereign and as proprietor, but it is useful to separate these two institutional interests in public land. By doing so, we may distinguish those interests which relate to governmental functions from those which are similar to the interests of any other landowner.

If the Federal Government is to achieve its broad constitutional responsibilities toward the national community, public land laws and policies should complement and implement other nationwide programs and policies. Public lands must be viewed as one of the tools that the Federal Government has available in pursuing its sovereign objectives.

The Federal sovereign interest lies in the efficient economic and noneconomic utilization of all the resources of our Nation and the avoidance of diversion of labor and capital to less productive enterprises. Consequently, from the sovereign point of view, laws and policies should be avoided which permit public lands and resources to be used in unfair competition with resources from other sources. Withholding of public land resources from development may in different circumstances either further or thwart the sovereign interest.

The national interest requires users of public land and resources to contribute their fair share of Federal revenues. This principle precludes tax or pricing policies which unduly favor the users of public land. There is a sovereign interest in assuring access on equal terms to all potential users of the goods and services from those lands. The avoidance of monopoly and special privilege is the basic policy of many Federal laws, including, for example, the anti-trust laws.

There is also a sovereign interest in the maintenance of quality environmental conditions on public lands at least equal to those standards legislated for the Nation generally. It would be unfair, if not impossible, to enforce on the private sector standards higher than those established for public lands by the very government charged with their enforcement.

The Federal Government as Proprietor

With about one-third of the country's land in its ownership, the Federal Government is a giant landowner. In its role as proprietor, the Federal Government has much the same interest as other landowners. It wants at least the same degree of freedom as other landowners to manage and use its resources.

As a proprietor, the Federal Government wants to maximize the net economic return from sales of land and resources.

The Government, in the role of proprietor, has an interest in assuring the availability of sufficient funds to finance programs at a level that will result in a new monetary gain. It is also interested in the furtherance of research to achieve better use of the land.

The Federal proprietor, in addition, has an interest in controlling users of the land in order to maintain the resource base and minimize damage or adverse environmental impacts.

State and Local Governments

In the absence of conflicting Federal legislation, state and local governments have constitutional jurisdiction over Federally-owned public lands for many purposes except where exclusive Federal jurisdiction has been ceded over specific areas. State and local governments have an interest in obtaining an equitable share of their governmental costs from the Federal Government as a proprietor of public lands.

State and local governments that will be affected by land use decisions expect that they will be consulted and have a voice in the Federal decisionmaking processs. They expect the United States in that way to give consideration to relevant state and local programs and also to consider the impact of public land actions on state and local governments.

Because they use public lands for a public purpose, these units of government expect a preference over competing potential users, and to purchase or lease public land at less than market value.

Users of Public Lands and Resources

Those who use the public lands as a basis for economic enterprise and those who use the public lands for personal recreation together have an identifiable interest in the public lands. This is not necessarily a short-term interest, since all users are concerned that public land policies provide an opportunity for the satisfaction of future requirements as well as present needs.

While users as a group have a common interest in the public lands, different classes of users, and, indeed, individual users within classes, often must compete for the opportunity to use the public lands. Many of the controversies over public land policy involve such conflicts, and they should be so recognized.

Users want equal opportunity for access to public lands and resources in which they are interested, and equal treatment in their relations with the Federal Government and with other users. They are interested in having a voice in decisionmaking from the time that plans are made for general use through the chain of events that may involve decisions affecting their particular uses. In this latter connection, of course, all users desire prompt and fair consideration of disputes with public land administrators.

Users are interested in having the terms and conditions under which use will take place specifically stated in advance. Although such need is not always recognized by those who use the public lands for noneconomic purposes, it is significant and should be taken into consideration.

Users also have a justifiable interest in seeking pricing and other conditions competitive with the use of other lands, together with security of investment, usually through assured tenure of use. As a corollary, they expect to be compensated if their use is disrupted or interfered with before the expiration of the term of the lease or permit of use.

With those principles in mind, let me first review the public lands and the new policies, and then suggest a course for the future.

As a nation, Americans once owned nearly two billion acres of public lands. In the course of our national expansion and development, public lands were sold or given by the Federal Government to the States and their counties and municipalities, to educational institutions, and to private citizens and industries. Other lands were set aside for national parks, forests, and wildlife refugees, and for military installation.

About 350 million acres remain - one-fifth of our Nation's land area. A little over half are in Alaska. In the "lower 48" the other 174 million acres are almost entirely in the 11 Western states.

Although they are rarely recognized as such, many of the most pressing domestic policy issues the Nation currently faces are also public lands issues: oil and gas development, energy facility siting and trans-continental pipelines, coal development, synfuels development, nuclear waste disposal, MX missile deployment, timber production, the availability of water and land for urban development, and the erosion and disappearance of the Nation's open public spaces.

At the same time, few areas of the country are so vast, so rich, and so poorly understood as the public lands. Few Americans understand that they own all this land, or know where it is, what it's worth, who's in charge, or why it's managed the way it is.

As we look for ways to meet our growing energy, food and fiber, timber, water, recreational and other demands, national attention has turned to the resources of the public domain owned by all Americans and managed by the Secretary of the Interior through the Bureau of Land Management (BLM). The attention is long overdue. Not surprisingly, controversy and conflict over the use of these resources have followed. The reason is obvious. We recognize the public lands today as a vast storehouse of resources and values that we will depend upon to sustain us in the next century.

The public lands were until recently called "the lands nobody wanted." But those days are over. The competition for the use of these lands is intense and growing and, given what's at stake, that's no surprise.

1. Recent estimates are that the public lands contain 25% of the Nation's oil and gas, 50% of the coal, 80% of the oil shale, 50% of the uranium, and 50% of the geothermal energy. Management of these public resources is arguably the most important energy policy responsibility of the Federal government.
2. The public lands contain an enormous storehouse of the Nation's nonenergy mineral deposits including some of the world's principal sources of beryllium, molybdenite, antimony, phosphate, and potash.
3. Four percent of the Nation's beef cattle and 38 percent of its sheep graze on the public lands at some point during their lives.
4. About 1.2 billion board feet of timber - enough to build 86,000 three-bedroom houses - come from the public lands in an average year.
5. Nearly 200 million people visit literally hundreds of unique recreational areas on the public lands.
6. The public lands are home to one out of every five of the big game animals in the entire United States, including most of the caribou, brown and grizzly bears and desert bighorn sheep, 50 percent

of the moose, 65 percent of the mule deer, and 45 percent of the antelope. No single Federal or State agency manages more wildlife habitat than BLM.

These are our "national resource" lands, and because of their richness and diversity they provide a classic formula for conflict. Historically, these lands were used predominantly by western livestock operators and mining interests, with few rules or competing demands. Recently, however, awareness of the importance of these lands for a much wider variety of uses has increased substantially. Increasing scarcity of basic commodities; a rapid shift of the urbanized demographic center of the Nation to the West and South; and a growing appreciation of environmental values have increased pressures for the use of these lands for such competing purposes as energy production, urban growth, recreation, wildlife management, and wilderness preservation - as well as for the traditional uses. These demands have broadened the range of people who feel they have a stake in, and something to say about, how the public lands are managed.

It is not so much that the rules of the public lands management game have changed as it is that there are many new players. There are new definitions of the public interest, new constituencies to be served, and new claims on the resources of the public lands.

Congress has been the leader in recognizing this evolution of demands, values, and attitudes. During the 1970's it enacted a number of laws that impacted public land management including requirements for environmental impact analyses; changes in Federal oil, gas and coal leasing; regulation of surface coal mining; protection of endangered species; designation of public lands in Alaska as parks or other conservation system units; and improvement of public rangelands.

The most important and sweeping of these laws is the Federal Land Policy and Management Act of 1976 (FLPMA). This Act replaced over 2,500 individual laws and was the first definitive, comprehensive statement of public land management policy. It formally reversed the longstanding view that the public domain lands would eventually be disposed of; it mandated that they be retained in Federal ownership for the benefit of the entire nation, unless it was in the public interest to dispose of a particular parcel.

FLPMA sets out criteria for sales and exchanges of public lands. Clearly, Congress anticipated that significant acreage would be transferred out of Federal ownership. Estimates in the 1960's indicated that at least 5 million acres probably would meet these criteria.

FLPMA established that the public lands are to be managed under principles of multiple use and sustained yield. In so doing it expressly recognized that the many and varied resources of the public lands are important but not limitless. They require balanced use to realize their many potential benefits.

FLPMA did not specify which uses would be allowed on which areas. Rather it set out a planning process to be used for making land use decisions and general principles to be followed in those decisions.

The basic multiple use-sustained yield principle calls for "management of the public lands and their various resource

> values so that they are utilized in the combination that will best meet the needs of the American people...a combination of uses that take into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, scenic, scientific and historical values...harmonious and coordinated management of the various résources without permanent impairment of the productivity of the land and the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output."

The basic principles to be followed include: (1) decisions based on resource inventory and land use planning with broad public participation, (2) maximum protection of the environment, with the cost of preventing or minimizing damage paid by users, (3) receipt of fair market value for private use of public resources, and (4) close cooperation with State and local government and local citizens and consistency with State and local land use plans.

During the six years that Congress was considering FLPMA prior to its passage and approval by President Ford in October 1976, these general principles and the land use planning process were accepted by both preservationists and developers.

FLPMA was proposed by Western Republicans in the Executive Branch. The Congressional leaders on the measure were all Westerners. Any one Senator could have stopped its approval on the last night of the 94th Congress. No one did.

However, implementation of the new law by the Carter Administration started a fierce debate. This debate is frequently characterized as being over the "choice" between preservation and development. Some of the industry press statements might lead one to believe that Secretary Andrus, who had been Governor of Idaho, had become a tool of "eastern environmental elitists." As a result, he "locked up" the public lands, preventing them from being expeditiously developed, and thereby frustrating industry efforts to (1) decrease the Nation's dependence on foreign energy and mineral supplies, and (2) provide lumber for housing.

At the same time environmental groups felt that development plans were being allowed to move ahead without proper attention to wilderness potential and natural values of the land. They cited the fact that over 100 million acres of public land were already under oil and gas lease but 80 percent had not been explored. They cited the rapid expansion of production from Federal coal leases with 25 billion tons under lease. They alleged continued overgrazing of domestic livestock and failure to control environmental damage from mineral development under the still-operative 1872 Mining Law.

These philosophical, and political, debates between "environmental protection" and "resource development" usually ignored the central issue: man's survival does not depend on one or the other -- it depends on both. FLPMA recognized that fact. The law does not mandate one or the other on any or all public lands. It recognized that both are necessary, and achievable.

More and more frequently these issues were also characterized as East versus West. The ultimate expression of this view is the so-called "Sagebrush Rebellion." The goal of the "Rebellion" is Federal legislation directing the transfer of the public lands to the States. The Rebellion had a rapid rise to national prominence, perhaps reaching its high point in late 1980, when then-candidate Ronald Reagan said "Count me in as a rebel." and Secretary of the Interior-designate James Watt said "I am a Sagebrush Rebel."

Since both took office the Rebellion has waned considerably. There have been no hearings on the legislation. Secretary Watt believes his "good neighbor" policy with State and local governments make the transfer unnecessary. Any Administration, particularly one interested in budget balancing, would be loath to give up the large revenues from these lands which far exceed management costs. Perhaps they have come to share the view, held by many, that the Rebellion is one last effort by livestock and mineral interests to keep effective control over the public lands -- the "lands nobody wanted" -- in the face of new demands and new users, many of them from local and regional residents. In my view, the Rebellion will ultimately be viewed as representing not the beginnings of a second American Revolution, but instead the last gasp of a passing era, an effort to turn back the clock to the days when competition among users of public lands was rare, when resources seemed inexhaustible, and when a consensus existed for exploitation.

Now some in the Administration favor "privatization". The President's budget assumes substantial revenue from sales of public lands. There is talk of possible new legislation.

Where should we go from here? Congress wisely did not establish an "either or" policy for public land management. It recognized the diversity of resources and the varied, sometimes competing, demands for their use. Congress anticipated that professional public land managers operating on-the-ground would apply the policies and the land use planning process spelled out at the national level in FLPMA to strike a balance among uses and users.

It has been said "We do not inherit the land from our parents, we borrow it from our children." FLPMA requires that this balance also has to be struck among generations. The private marketplace, for all its virtues, is not equipped to deal with the various long-term, virtually non-quantifiable, values of the public lands, such as watershed protection and wilderness preservation

How can this elusive balance be achieved?

First, we must implement the land-use planning and decision-making process established by FLPMA. We don't need new public land laws. We may very well need to streamline existing regulations and procedures based on experience. Existing law allows this. We do need to get on with making the hundreds of thousands of individual decisions that are required every year. Some of these decisions will be to sell or exchange public lands.

Decisions must be based on full information on resource capability and on the costs and benefits of alternative uses. There must be full representation of conflicting interests and viewpoints. This means not only interests like timber, mining, recreation and wildlife, but also urban consumers, state and local government, local industries, and neighboring landowners. Once made, decisions should be carried out so that land users can safely make investment decisions. Most users are ready and willing to take steps, sometimes costly ones, to prevent or minimize damage to the land and the environment from their activities. They need to know what is required and believe that the requirements will be enforced reasonably, but promptly.

Second, the Executive Branch and the Congress must make a commitment to the FLPMA processes. This means providing adequate manpower and funding so that professional land managers can do their job properly. The current and proposed budget cuts and low morale now so common will only lead to inadequate decisions susceptible to delay and possible litigation. It also requires delegation of decisionmaking authority to the lowest possible level in the field. Congress and political appointees in the Exececutive Branch must provide adequate guidance for exercise of that authority. They must also refrain from second-guessing decisions of on-the-ground managers unless they are clearly inconsistent with established law, regulations, or policy.

A large portion of the public lands budget consists of items that any responsible private business would treat as capital investments, not annual operating costs. It is time that the Federal government do so, too. A portion of the annual income from these lands should be set aside as a public land capital improvement fund.

Third, in an era of reduced Federal budgets and a widespread desire to "return power" to the states, we should take full advantage of all the Federal-state cooperative provisions of public land policy. These include consistency of Federal management plans and programs with state and local land use planning; opportunities for state and local governments to acquire public lands needed for public purposes, frequently at little or no cost; and 50-50 sharing of Federal mineral leasing revenues with the states, with priority for expenditure of the state share to aid local governments impacted by Federal mineral development. In 1983 these payments are estimated to be close to $700 million.

Finally, and most importantly, we must reduce the polarization that has characterized much of the recent public land policy debate. Cecil Andrus called traditional public land users the "rape, ruin and run boys." James Watt has referred to "toadstool worshippers" and "environmental extremists" who are always selfish and usually Easterners and possibly communists. These and other colorful statements make good press, but they don't help make good public land use decisions.

We all must recognize that Congress did not side with any user group. It took the middle ground, not just out of political expediency but out of recognition of reality. Public land issues are never black and white. Neither are they simply development versus preservation, east versus west, urban versus rural, public versus private, or Federal versus state. They are all these and more, wrapped up together in a complex web.

All interested parties must be willing to enter into dialogue, not diatribe. We need reasoned responses, not knee-jerk reactions: cooperation, not confrontation or litigation. All must be willing to work within the FLPMA process to make their arguments and resolve their differences. To ignore them or to propose radical changes in the existing principles or processes is to invite suspicion, stridency and, eventually, I think, stalemate.

If the FLPMA process is short-circuited or starved before it has a chance, we will all be losers. Instead of cooperation that is necessary to make the process work, we shall see more of the polarization in which "protectors" and "users" try both in Congress and the courts to throw wrenches in each other's machines. Any hope for the certainty needed to preserve land or to develop it wisely will disappear. Risks of paralysis or backlash will grow.

Let's use the policies and processes of FLPMA which are expressly designed to achieve soundly balanced public land programs. If we do, we can achieve the goal of Congress that the public lands be managed in a manner that "where appropriate, will preserve and protect certain public lands in their natural condition" and at the same time "recognize the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands" while also transferring out of Federal ownership by sale or exchange significant acreage so as to achieve the basic objective that the lands "are utilized in the combination that will best meet the present and future needs of the American people."

Mr. **Noonan**. Thank you, Mike, for a very thoughtful presentation. Our third and final panelist is Dr. Marion Clawson, Senior Fellow Emeritus, Resources for the Future. Dr. Clawson.

STATEMENT OF DR. MARION CLAWSON, SENIOR FELLOW EMERITUS, RESOURCES FOR THE FUTURE

Dr. **Clawson**. Thank you for the opportunity to be here. I have submitted to the panel a paper, which is much too long, and I am going to talk around it and away from it and maybe get back to it at intervals. And I am going to keep within the time limits, because the timekeeper is sitting right here where she can exercise physical restraint.

It seems to me that the discussion this morning and this afternoon and, in fact, the very existence of this workshop is evidence that there is a rising concern over the management of Federal lands and that there is some degree of dissatisfaction with the present management.

I think the legislation that Mike referred to is one evidence of that. Many of the conservation groups expressed a great deal of dissatisfaction; so have many of the commercial interest groups. They don't all agree on why they are dissatisfied, but there is a degree of dissatisfaction.

There is a degree of interest today, which greatly exceeds the degree of interest from the days I was engaged in public land administration. I think we need to recognize that the role of the Federal lands in the national economy and the national society has changed greatly over the 200 years since Federal lands began. Incidentally, the anniversary of the creation of Federal lands will be on October 29 of this year, the 200th anniversary, when the federation of Congress accepted the publicly owned land from the State of New York.

That was the beginning of the Federal estate. We acquired land by treaty, by conquest, by purchase. We disposed of it. We have preserved it. We have managed it. And the goals have changed very greatly.

The discussion today has, I think, brought out that that ximes are changing; times are changing in many ways, particularly in the demand for the Federal lands. I would argue two additional directions as well. One is that the users of the Federal land today are a very different lot than they were in their fathers' and grandfathers' and mothers' and grandmothers' day.

Mr. **Noonan**. Marion, could you talk into the microphone?

Dr. **Clawson**. I will try. One of the things that has also happened that has had perhaps less consideration than it deserves is the Federal lands have become enormously valuable property. It was brought out this morning several times that there has never been a really complete inventory, much less an appraisal of the Federal lands.

I have made some rough guesses and estimates and I conclude in terms of hundreds of dollars the value of the Federal estate has risen by more than 20 times in the last 60 years. It is today an enormously valuable amount of property and has not been really managed as if it were such valuable property. I think that the thrust of the legislation in the last few years that Mike referred to is that we must give more consideration to the values created and the values, the amounts of capital that are involved.

As I look ahead a little bit, it seems to me that there are five broad possible lines of alternatives for the administration of Federal lands or some combination of these five. One of them is complete or virtually complete retention in Federal ownership of the present Federal estate but a search for a more efficient and with—more or less this is what Mike was saying—keep the lands but we manage them more efficiently.

This is the thrust of the legislation of the last decade. A second broad direction would be to turn some of them, a lot of them over to the States. Now, there will be, I am sure, some disposal to the States, as there has been in the past. There is the very problem that Secretary Watt mentioned this morning of honoring the commitments to the States for their land grants.

We overlook the fact, often, that the States have had, over the last 100 years or more, an enormous amount of Federal land turned over, and by and large the director of the States administering that land is not a glorious one.

A third broad direction of change would be to transfer substantially the Federal land to private ownership. While this is often thought to be transferred to commercial interests, timber companies, mining, mineral interests, ranchers, and so on, it could equally, of course, be to conservation groups as well.

A fourth direction which has been brought up now twice in recent months in public speeches is the possibility of creating mixed public/private corporations. Bob Nelson, who is here today, made such a proposal. Some of this talk about public corporations was a long time ago, but we were talking about wholly Federal. But there is a new direction.

A fifth direction that I can think of—and one that I am much interested in—is the possibility of considerably expanding the long-term leasing of Federal lands to private groups—again not merely to interest groups, but conservation and citizen groups as well.

The fact is we do a lot of transfer of Federal lands to private groups for periods of time today. The oil and gas leases are for a limited number of years, but thereafter as long as oil and gas is produced and paying plenty and that may be a great many years.

Grazing permits, we don't call them leases, but permits are for 10 years. Timber purchases are run over 2 to 5 years, but even recreation use land, use of Federal land is with short-term occupancy under regulation. I am talking about the possibility of considerably expanding the long-term leasing of land for various purposes under terms which would be appropriate to uses including recreation, wildlife, and even wilderness.

This is not the time nor place for me to expand on the details of that. I do have some very definite ideas about what could be done. But above all, I think that we could see an even mixture of any two, three, or four, or five of these five alternatives. We could retain and will retain a lot of land, even if we decide to dispose of it.

It will take a long time to dispose of and we would retain a lot of it for a long term. We could transfer more into private ownership or State ownership. We could experiment with corporations. We could experiment with long-term leases for any mixture. If any work is done except the first of those alternatives, it will be selective by some Federal lands and not others.

The whole disposition/reservation/management process of Federal lands has always been selective, not always wisely selective, but always selective. One of the things that I suggested that some people have found new and original is that if we had not gone to either sales provisions or leases that we could institute what I have called a pull-back arrangement.

One individual would provide for a lease and some other individual or group could exercise this pull-back authority to pull back to the second individual's use a part that wraps as much as a third of the area applied for.

There would be two or three or four advantages to such a link. One would be that it would be a prime means of preventing monopolization or unreasonable concentration of ownership or use on the Federal lands. Others would have a chance. It would be a means of protecting small private groups who perhaps could not compete in a general bidding process.

It would require a reasonable negotiation and competition among private users rather than each fighting among themselves and with the Federal agencies for a preferred position.

I think there are very great opportunities in this direction. I want to conclude, and I think I have 2 or 3 minutes left, by simply saying that I think the period of the 1950's and most of the 1960's when it did look as if the issues of Federal land administration and ownership had been settled for all time. I have one thought on that and I have said it publicly, I now think that is not quite so true, and I think perhaps it is wise. We ought to reexamine and rethink our whole approach to the Federal lands.

I think changes will come in the future. What those changes will consist of, both direction and consent, I am by no means sure what will happen or perhaps what should happen. But I think there are two things. One is that Federal lands are far too important in their economic values, social values, and their political values to be ignored or undermanaged.

And, second, I think there are alternatives that I have sketched in very general terms and broad lines of possible future development. And I am sure that there are others. I am also fairly sure that no single approach is going to solve all of the problems.

I would like to say that those people who first invented the idea of national parks or first invented the idea of national forests or first invented the idea of fish and wildlife refuges were the great innovators, the great social engineers of their day.

Some of those concepts are pretty old stuff today, but they were new and exciting and revolutionary when they were proposed. I would like to think that we are just as revolutionary and just as innovative and just as daring as were those early pioneers.

[The prepared statement of Dr. Clawson follows:]

ALTERNATIVE STRATEGIES FOR THE FEDERAL LANDS

Marion Clawson

A Paper Prepared for a Workshop on Land Protection and Management,
Subcommittee on Public Lands, Senate Committee on
Energy and Natural Resources, June 14, 1982.

A number of events and situations in the past few years provide evidence of substantial dissatisfaction with the management of the federal lands as this has operated in recent decades.

This workshop itself is evidence of such dissatisfaction; if everything was perfect, and perceived to be so, there would be little point in a workshop such as this. Other and more formal Congressional action is further evidence. The Resources Planning Act of 1974, the National Forest Management Act of 1976, and the Federal Land Policy and Management Act of 1976 were all expressions by the Congress of the need for federal land management more in accord with guidelines provided by the Congress. The Administration proposals for accelerated leasing on the Outer Continental Shelf and the talk of privatization of some of the federal holdings are evidences of concern from a different direction. The Sagebrush Rebellion is clearly an outgrowth of a substantial dissatisfaction with existent federal land management, by some of the user groups and some of the elected officials in the States with large areas of federal lands. The conservation community, broadly defined, has expressed much concern in recent years over federal land management, including the establishment and use of wilderness areas.

These various expressions of dissatisfaction agree only in their concern that present management of the federal lands is in some degree unsatisfactory. They do not agree in their criticisms of the nature of that unsatisfactory managment nor do they agree in the kind of changes they would like to see made in federal land management. Some degree of dissatisfaction with government programs of every kind is inevitable, of course, and it may well be argued that some or most of the dissatisfactions so briefly listed here are normal or that they are transitory. Any significant change in federal land management, whether initiated by the Executive Branch or by the Congress, will almost certainly be both preceded and followed by much debate and criticism. It is premature at this time to say what changes, if any, are likely to be made over the next several years. But it is precisely because dissatisfaction is expressed and because substantial change is possible that it is desirable at this date to outline the possible alternatives for change and thus to a degree inform and stimulate the debate, without in the least attempting to prejudge or foreclose it.

The Role of the Federal Lands Has Changed

The federal government has owned land, in the proprietary sense of that term, for 200 years. A federal estate was created on October 29, 1782 when the Confederation Congress accepted the donation of publicly owned lands outside the boundaries of the newly independent State (formerly British colony) of New York. From that small beginning, the federal estate expanded greatly by treaty, conquest, and purchase, culminating for land areas with the purchase of Alaska in 1867 and with the accession of the Outer Continental Shelf in the last 25 years. Under a conviction that private ownership of land was desirable and under many laws, about two thirds of the federal land has been disposed of to individuals, corporations, States, and others. The disposal process dominated federal land history throughout the 19th century. This was superceded, at first gradually and later fully, by a process of withdrawal of federal lands from disposition, first for the Forest Reserves (now national forests) and later for the grazing districts. The withdrawn lands have been managed in three fairly distinct eras or modes; custodial management from the date of withdrawal until about 1950; intensive management from 1950 to 1970; and consultation-confrontation management since 1970, during which user groups have not only been consulted in planning but during which the likelihood of a lawsuit originating from a user group was a major factor in federal agency operation. This history is not only long, as judged by the scale of American national existence; it is also complex, full of details, and to many of us intensively interesting.

One reason why extensive continued public ownership of land was sought or at least tolerated in a country which rightly prides itself on the freedom and the virtues of individual action and individual choice was that the federal lands have been open to use by private individuals under a wide variety of laws. Individuals chose where and when they would enjoy outdoor recreation on the federal lands, ranchers ran their livestock on federal lands, forest industry firms cut timber from federal land, oil and gas and other mineral exploration and exploitation was by private firms, all operating under applicable law and federal regulations. There has never been any major exploitation of the resources of these lands by federal corporations. But it is precisely in the interface between public ownership and private use that the difficult problems of federal land management have arisen. If there had been no use, there would have been few if any management problems. The intensity of the problems is largely caused by the intensity of the private use, including the conflicting claims among rival potential users.

The history of the federal lands shows clearly that change has dominated their use and management over the decades. As the country has grown, developed, and changed, so has the role of the federal lands. There is no reason to think that all change has been in the past; on the contrary, major changes are highly probable in the future, even if we are unsure as to the nature of those future changes. If history of public lands teaches us anything, it is that history does not stand still. There have been periods of relative quiescence or of slower change but there have also been periods of rapid change, ferment, and uncertainty. It may well be evident, 20 or more years from now, that the 1980s were a period of change.

In retrospect, the 1950s and early 1960s seem a period of relatively little change, although they did not seem so then to the participants in federal land management. A number of policy issues about the federal lands then seemed settled or at least not up for serious challenge. The use of federal lands for virtually all purposes was expanding under applicable laws; accommodations to such increased use were made by the federal agencies, with some conflicts, to be sure, but in general more use was fitted into nearly constant acreages. The issue of federal versus private land ownership seem settled, in the main, and there was both little reason to debate this issue and hence little debate about it. The Public Land Law Review Commission in 1970 gave the conclusion of a federal commission to this issue by advocating that federal land thereafter be disposed of only when there was a clear national interest in disposal. Some of us had publicly accepted essentially that view some years earlier. The major legislation since 1970 has explicitly or implicitly endorsed the idea of continued federal land ownership on approximately the present scale. Until the last three of four years, for many years there had been no serious debate about extensive further disposals of federal land; that policy issue seemed settled.

But times have changed since those years which in retrospect seemed fairly quiet. The demands on and the use of the federal lands have increased greatly, and to levels which make conflicts among uses more common, more difficult to resolve, and more emotionally and politically charged. It is still possible to accommodate more use on the same areas of land, but it is more difficult to do so, and more difficult to gain the acceptance of rival users to any program of management. At the same time, the users of federal land have changed; today they are better educated, more widely travelled, more prosperous, and more demanding of their "rights" than were their parents and grandparents. There are many well-trained professional persons outside of the federal agencies, able and willing to challenge the professional judgments of the agency personnel. Users of public land are no longer willing to accept uncritically the judgments or the pronouncements of federal agency personnel.

On the purely economic front, times have changed for the federal lands also. The capital value of the federal lands has risen dramatically in recent years. No comprehensive thorough appraisal of those lands has ever been made but I have estimated that the value of the lands and resources administered by the Forest Service and BLM today approximates $500 billion and that in real (constant dollar) terms that value has risen by 22 times since the mid-1920s. These federal agencies have suddenly become the managers of a vast pool of capital, for which they have had little political guidance and for which they were not well equipped. The management problems of this huge pool of capital will surely grow in intensity and importance in the future. The federal agencies and their clientele should expect that other interest groups will increasingly cast envious or at least longing eyes at this capital, the returns from which have been and are so meager.

Directions and Forms of Future Change

If there be agreement that the present management of the federal lands is not fully satisfactory, there is far from agreement as to how it should be changed or as to what better management would consist of. There are at least five major alternatives for the future ownership, management, and use of the federal lands:

1. A major push could be made for vastly improved management of the federal lands, but with the retention in federal ownership of all or essentially all lands now so owned. I interpret the Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, and the Federal Land Policy and Management Act of 1976 as major steps in this direction. In each case, the Congress passed and the President signed laws which provided, in more or less detail, relatively strong and explicit directives to the federal agencies for the management of the lands under Forest Service and BLM direction. In each case, of course, the legislation represented acceptable compromises among numerous interest groups, including the top personnel of the agencies. In each case, there was necessarily a substantial ambiguity in the legislation, because more explicit and clearer directives would have been unacceptable to some interest group. In each case, the full meaning of the Act will be determined by the courts and probably after some interval of time. It is sobering to remember that the full meaning of the 1897 Act was determined only in 1974. Each Act would have been a major piece of statesmanship about thirty years earlier --

the 1976 NFMA in 1960 instead of the Multiple Use Act and the 1976 FLPMA in 1934 instead of the Taylor Grazing Act. Congress frequently acts on a felt and evident need, meaning that its action is not entirely timely. This is, of couse, one of the strongest arguments against continued federal land ownership.

Each of these Acts called for much more intensive planning of the federal lands, each called for and specified the form of public participation, and each goes a long way to establish economic criteria for the management of the resources dealt with in each Act. Congress was calling for new and more efficient management of these lands; and those who supported or at least accepted the legislation agreed -- even when each may have had a different idea of what improved management consisted of. In considerable measure, each Act was in line with previous legislation: to retain the lands in federal ownership, but to manage them in ways deemed more desirable. No one, I think, including the personnel of the agencies, is wholly satisfied with the planning and management which is now developing under these Acts; and many critics are arguing for something quite different. There is widespread feeling among many of us that, unless the planning and management of these lands can be made simpler, faster, more efficient, more easily understood, and more directly to acceptable lines, that the pressures for greatly different means of land and resource management will grow to the point that something drastically different will be adopted. One can only say, in early 1982, that the jury is still out.

2. Some or all of the federal lands might be turned over to the States, presumably free but possibly with some kind of down payment or of continuing revenue sharing. This is at least one version of the Sagebrush

Rebellion. Those who advocate it believe that State governments could do a much better job and more cheaply than the federal agencies now do, and that the management of the resources would be more receptive to local interests and needs. Indeed, it is the latter which most upsets the opponents of the Sagebrush Rebellion, for they fear that their hardwon "conservation" victories about the federal lands would be jeopardized or lost. There is much precedent for turning large areas of land from the federal to the State governments; the common school grants, the quantity grants for colleges and other purposes, and above all the swamp and overflowed land grants turned large acreages to the States. The States, by and large, have a proven record in land management: failure. One need only review the history of State land grant administration, wherein virtually every State at one time or another has had a major political scandal concerning State land administration, and wherein most States have squandered their land inheritance by sale or other disposition without adequate or reasonable compensation. I think disposition of federal land to the States would adopt the worst of both worlds: public agency, but State instead of federal and public instead of private. But I also recognize that it has a certain appeal and that the recent and current efforts in this direction will not quickly vanish.

3. Substantial acreages of federal land could be disposed of to private parties -- individuals or corporations. The precise terms of such transfer, the prices to be paid, the kinds of land available, the continuing restrictions on land use, if any, and many other aspects of such transfer would of course pose many policy issues. While most observers immediately conjure up the disposal of the most productive lands to profit-seeking persons or corporations at bargain prices, the possibility exists for transfer

of these or of other lands to conservation or other private but nonprofit groups. If Nature Conservancy can be the recipient of a gift of private land, why cannot it be the recipient of a gift of federal land? While some conservation groups have never sought ownership of land, others have, and all might be potential purchasers of federal land, if large-scale disposal were contemplated, and if the terms for them were sufficiently favorable. The arguments for private ownership, whether for profit or for other purposes, rests upon the long proven capacity of individuals or groups to seek their own ends of income or satisfactions with more efficiency than public agencies could ever achieve. One version of the Sagebrush Rebellion is for transfer of federal lands to private ownership.

4. Mixed public-private corporations could be established, to take over the management of selected areas of federal land. Nelson has proposed such corporations for the prime timber-producing federal land, with initially 25 percent of the stock held by local governments (which now receive 25 percent of the revenues from some federal land) and the remaining 75 percent initially held by the federal government, but with the latter stock gradually sold to private persons or corporations, until in time the corporation would be largely if not wholly private-local government.[1] Teeguarden has explored the possible arrangements of a mixed public-private corporation for each national forest.[2] He would force such corporations to live on their own resources, which might be augmented for short periods by borrowings to be repaid out of revenues, and to pay a large interest return on the capital value of the forests. This would both impose a degree of discipline on them and offer incentives for good management now lacking to the federal agencies. The corporations presumably would be responsive to local interests and concerns. The precise terms of the

charters for such corporations, the limitations, if any, on stock transfers, the kinds of land and the terms of the land transfer, and many other features of such corporations obviously would pose policy issues which could be settled only after political debate. Although the general idea of mixed public-private corporations is neither novel nor untried, yet its application to federal lands is as yet untried. Perhaps it could be experimented with in some areas, before adoption as a general device.

5. Longterm leasing of some federal lands might be regularized and extended substantially. The time-circumscribed transfers of control of limited areas of federal lands to private parties are more common than is generally realized. The family which picnics in a Forest Service or BLM recreation area enjoys exclusive use of a small site for an hour or two; overnight campers have a site for a little longer; ranchers have ten-year grazing permits; timber farms buy a major part of the value of a site with a few years in which to harvest the timber; oil companies lease federal lands for defined periods of time, but as long thereafter as oil and gas are produced in paying quantities; and there are other time-related or space-limited transfers of federal to private management, under laws, regulations, and rules. These time-constrained transfers of control over specific tracts of federal land should be greatly extended, formalized, and made more consistent with each other and with the kinds of natural resources in question. They could provide terms which would make such leases attractive and feasible for wilderness, recreation, wildlife, and watershed management groups, as well as for commercial utilization. Lessees of federal land, like lessees of private land, would normally take over all annual management costs. They would normally also pay a rental but this could be kept low for certain kinds of land.

If longterm leasing of federal lands were to be increased and extended to all major land uses, then the precise terms of the leases would be very important. Such terms might well vary according to the kind of use to which the land was to be put -- different terms for a wilderness use than for commercial timber harvest, for example. The length of the lease would have to be chosen with the kind of use in mind -- long enough to be attractive to users, but short enough to bring the renewal or termination of the lease under policy review at intervals. The terms of the leases would have to be drawn carefully to avoid controversy and litigation, to promote efficiency in resource use, and to provide equity for users, the public, and the government. This would include rental payments and other terms of leases. If some kinds of leases would be available for some kinds of land but not for other kinds of land, then the definitions of each kind of land would have to be spelled out carefully.

If longterm leasing of federal lands were to be increased, the very common private leasing of many kinds of property would offer some helpful guidelines. Good private leases provide for inspection of the property by the owner, at specified times and conditions; for having the lessee buy the removable property at the beginning of the lease and the landlord paying for the remaining removable property at the end of the lease, to avoid a financial incentive for resource liquidation by the lessee; for negotiation over lease renewal well before the end of the term; and for may other relationshps and contingencies.

If longterm leasing of federal lands were increased, no user would be forced to lease, although some might be under some pressure to lease rather than risk having some rival lease the land. The terms of leases would have to be made sufficiently attractive to make the leases rewarding to prospective lessees but they could also be made stiff. My considered judgment is that not over one fourth of the present federal land area would prove attractive to lessees if the latter were required to assume the costs of management of the land and to pay rentals, even nominal ones. The remaining federal land would thus continue under essentially the present land management, unless it were disposed of by one of the other alternatives.

Some Common Features of Alternatives

For each of these alternatives, except possibly the first one, the operations would be selective as to types and locations of land and other resources. The States likely would be reluctant to take over some kinds of federal land; much land would likely be unattractive for private ownership, for mixed public-private corporation ownership, or for longterm leasing. The past land disposals and past reservations of federal land have been highly selective in character; there is no reason to think that such selectivity would not continue. The basis for selection might be spelled out in law or regulations; for instance, highly productive forestland might be leased for long periods, but timber harvest might be precluded from less productive forestlands if leased for other purposes. The terms of leasing, sale, or other transfer might be such that prospective buyers or lessees would themselves classify the federal lands into those suitable and those not suitable for the uses they sought. Nelson and I are each rather explicit in the terms under which management of federal lands would be transferred and in the kinds of land to which specific arrangements could be applied; some of the other proposals are less explicit on these matters. Even if all the present federal land remains under the present but improved federal management, some measures would be applied to some areas and not to others -- the relevant laws are really pretty explicit on this point.

Although these five general alternatives for future federal land management have been described separately, more than one of these alternatives might be used, in varying combinations with one or another alternative. That is, some land might be sold, other land included in longterm leases, and some land retained under something like the present system of federal land management. If sale or lease were the objective, this might apply to only part of the federal land or to all of it; either way, considerable time would be required to work out the change. Thus, for a few decades at the minimum, some land will continue under direct federal land management, more or less as at present; of course, if the first alternative were chosen, essentially all the present federal land area would remain under direct federal administration for an indefinitely long period. It is most unlikely that the choice of any one of these alternatives, even if overwhelmingly endorsed by the Congress and the electorate, would stand indefinitely without criticism and without agitation for change, or without challenge in the courts and elsewhere. We today are no more able to settle federal land policy forever than were any of our ancestors.

An Innovative Proposal

If the alternative of extended and regularized longterm leasing of federal lands to all kinds of organizations were chosen, an innovative idea might make such an alternative both operationally possible and also politically acceptable to diverse interest groups. This is the concept of pullback. One person, group, corporation, or unit of local government might apply for a lease of a particular area of federal land, under conditions of land productivity, size of minimum area, annual rentals, and other matters as specified in the law. But any other person, group, corporation, or unit of local government would have the privilege of pulling back, or taking over for itself, any part, but not to exceed a third, of the area applied for. Whoever exercised the pullback privilege would have to meet the terms applicable to the original application; but, subject to that requirement, the consent of the original applicant or of the federal agency would not be required. That is, the pullback privilege is absolute, not subject to discretionary approval or rejection by anyone; if there were more pullback applicants than could be accommodated under the one-third limitation then choice among them would be by competitive bidding.

The purpose of the pullback idea is to promote meaningful competition and bargaining among possible rival uses and rival users of the federal land. In many ways, it would be similar to the workings of the private competitive market. A timber firm would apply for an area; a wilderness, recreation, or wildlife group could pullback any part of the area, up to the one-third limitation; it would have to pay the same rental or other cost as the timber firm, but the consent of this firm would not be required. Likewise, a conservation group might apply for a wilderness area, from which a timber firm could pull back as much as a third. The necessity of paying the same amount as the original applicant would exercise a sobering influence on potential users of the pullback; but the vulnerability to pullback by others would impose a discipline on the original applicant.

The competitive strength of rival persons or parties desirous of getting use of federal land would be directed toward each other, not toward the federal agencies, if the pullback provision were in operation. This would obviously make life somewhat easier for the federal agencies, but there are more important benefits than that. The possibilities of meaningful multiple use arrangements would be greatly increased, the recreation group would agree not to exercise its pullback rights against a timber firm if the latter would make specified provisions for outdoor recreation, for instance. Or the wilderness group would agree not to exercise its pullback rights for tracts of productive timberland if the forest industry firm would not oppose the extension of another wilderness area, to use another example. While unlawful collusion among rivals might arise, collusion does arise now and there are laws against it. One important aspect is that any minority group, of any kind of minority, would be able to exercise its pullback rights when it might not prevail for any real consideration from the federal agency. While there might have to be established in law some minimum acreage that could be included in a pullback provision, this minimum could be set very low; in this way, relatively small groups of concerned persons would have some capability for dealing with local situations about which they felt keenly. Above all, the willingness of an interest group to exercise its pullback rights, or its unwillingness to do so, would provide unequivocal evidence of the value that group sets on some area of federal land.

The availability of the pullback provision, and more particularly its availability to any interest group prepared to meet the terms of the original applicant without the approval of either the original applicant or the federal agency, would go far toward calming the fears of groups which believe that an enlarged federal land leasing program would work to their detriment. Any interested group could, within very wide limits, protect its interests if it were willing to pay the costs. With the pullback in operation, there need be no concern that enlarged federal land leasing would result in the federal lands being used only for commercial or development purposes or only for wilderness.

Conclusion

I conclude with the observation that major changes in federal land management seem likely in the future. The direction and the specifics of the change are less clear. The federal lands are too important not to be managed efficiently and for their greatest economic output of all kinds of goods and services. The problems of present federal land management seem disturbingly great to many observers. There do exist many alternatives. I reject any idea that we today are less imaginative and less resourceful than the men and women who pressed for the establishment of the national forests, national parks, and grazing districts. We too can innovate; let us try.

References

1. Robert H. Nelson, "Making Sense of the Sagebrush Rebellion: A Long Term Strategy for the Public Lands," a paper prepared for the Third Annual Conference of the Association for Public Policy Analysis and Management (Washington, October 23-25, 1981).

2. Dennis E. Teeguarden, "A Public Corporation Model for Public Land Management," paper presented at a conference on public lands, Utah State University, April 23, 1982.

Mr. NOONAN. Thank you, Marion, for your ideas and thoughts. They are still visionary just like they were in the 1940's when you headed up the Bureau of Land Management. Thank you very much.

I would urge everyone to get a copy of these three papers. They were exceptionally good. There will be copies afterward up here.

We have a group of three distinguished respondents. Each respondent will have 6 minutes. Our first one will be Mr. Bruce Selfon, acting executive director, Property Review Board. Bruce.

STATEMENT OF BRUCE I. SELFON, ACTING EXECUTIVE DIRECTOR, PROPERTY REVIEW BOARD

Mr. SELFON. Thank you very much. I would like to join with you in congratulating our panelists for the quality of their remarks and they are so thought-provoking that I am really tempted not to do what I am supposed to do, and that is talk about the administration's program, but engage in a debate with them. But I think I will allow my fellow respondents to do that.

I felt that there was much we could agree with in all of their papers and I would like to also say how happy I am to be able to appear here. When I recently assumed this responsibility Tony Bevinetto was kind enough to at the first opportunity provide me with a copy of last year's record of this proceeding and I found it the single, most informative document about the wide range of issues and thoughts about the public lands of anything that I have had a chance to read.

And I am confident that this year's record will be equally as valuable and I want to just congratulate you and members of the committee and the Congressional Research Service for this excellent forum. My task today is to amplify in a little bit of detail the program of the Property Review Board that I am managing on a day-to-day basis.

Mr. Harper, the chairman of the Board, and Secretary Watt and Mr. Crowell in their communications earlier this morning discussed briefly the asset management programs of their organizations and Mr. Harper discussed the origin of the Board.

I think that as we have a chance to progress, the Property Review Board will welcome taking the chance to talk to people in the field about our program. I have been struck by some criticism that what we are doing has not been generally available to the public and I think it is because what we are doing has not been particularly exciting or newsworthy or even decisive.

What we are doing is attempting to take a management initiative by the President and translate that into an effective asset management program for the public lands, realizing the expertise of the land management agencies of the Federal Government. And that was a very long sentence and you can see why it does not make headlines, but that is what we are trying to do.

One point that Mike Harvey made is particularly significant here. The members of the Property Review Board are the most senior advisers to the President and I am sure that none of them would pretend to be expert in land management or certainly the management of the public lands, nor do I.

We do intend and must rely upon the cooperation and support of the expert agencies and of the people and the interest groups that support and correspond with them. To the extent that the Property Review Board has not begun a complex program of public participation in our initiative thus far is because we intend in the first instance to rely upon the land management agencies to handle that task force.

But that does not mean that we are not happy to participate when we are given the opportunity such as today. Now, I would like to go ahead and talk a little bit about some of the specific decisions which have been brought before the Board at its first meeting, which took place on May 21, 1982. They have been alluded to by Secretary Watt earlier this morning and I would just like to recap in some more detail where we are on some of these topics.

First of all, you know with respect to property that is disposed of through the Federal Property and Administrative Services Act of 1949, that is through the GSA process, which are mostly unused military facilities and office buildings and things like that. It is quite clear that the property we are trying to get rid of is that which is unneeded and underutilized and not being put to optimum use.

These terms are defined in the regulations of the General Services Administration. But those terms do not have any real meaning if you try to apply them to the public land. A piece of public land could look quite unused if it were totally vacant, but that might be a perfectly satisfactory and valuable use for that piece of property.

So in the first instance we have to ask the land management agency with respect to the public lands to suggest to us criteria for the disposal of property that is unneeded, bearing in mind, of course, that we have guidelines to that process set out in section 203 of FLPMA. By and large that process is, just as Mike suggested, just beginning to be utilized and understood.

So the first thing we did with respect to the Department of the Interior is ask them to provide us categories for lands and how they ought to be looked at. We quickly agreed that there ought to be basically three categories. I defy anybody to disagree with these.

That is that there will be some land that you will sell and some land you will retain and some land you will study. And that pretty much covers the universe.

Now, I expect there will be considerable argument as to which lands will go into which category. I would like to suggest today that where we are in the process is putting the finishing touches on the various subcategories of land within those three broad categories.

Now, this is not to say that we have in fact identified specific tracts of land. That process is just beginning to be done and, of course, would have to take place only after we have had some understanding of the properties in the various subcategories. Now, briefly——

Mr. NOONAN. Can you finish up here?

Mr. SELFON. Briefly, we have decided as was suggested earlier that the lands that are of critical environmental concern, wilderness areas, national conservation areas, wild and scenic rivers, national historic trails, wild horse management areas, et cetera, are not going to be sold and will be kept in a retain category.

In addition, it has been tentatively decided that no recoverable coal resource area, no geological structure, the Outer Continental Shelf, geothermal resource area, et cetera, are not going to be sold. What is going to be considered for sale is lands that are urban tracts that are not already under application for recreation or other public purposes, scattered nonurban tracts that would be more effectively managed if they were not in public ownership, lands designated for intensive agriculture, dry land agriculture, lands designated for commercial and industrial development under existing land use plans, et cetera.

The Department of the Interior has advised me that they have been able to identify 2.7 million acres of property already marked for sale under existing land use plans, fully in accordance with the FLPMA process and fully in the cooperation, knowledge and intent of the local communities. This is the property that the Secretary referred to this morning that we intend to try to put on the market first.

In addition, in category 3, those lands to be studied, preliminarily, we have decided that grazing lands that are currently under license, lands that have been applied for in the good neighbor policy and other similar categories of lands which make up the bulk of the acreage are going to be studied before being placed either in the sell or retention category.

Now, I have run out of time and so I will stop here. If anyone cares to ask, I will be able to describe what we are doing with the good neighbor policy and exchanges as well.

[The prepared statement of Mr. Selfon follows:]

PUBLIC LAND AND THE PROPERTY REVIEW BOARD

PRESENTATION OF BRUCE I. SELFON
ACTING EXECUTIVE DIRECTOR
PROPERTY REVIEW BOARD

BEFORE THE SENATE PUBLIC LANDS SUBCOMMITTEE WORKSHOP ON LAND PROTECTION AND MANAGEMENT

The Administration's property management initiative has four principle objectives:

Review of the real property holdings of the Federal government

Improved management of this property

Expeditious sale of unneeded property

Reduction of the national debt, using the proceeds of the sales

Among the real property holdings of the United States are those lands administered by agencies of the Department of the Interior, principally the Bureau of Land Management, the National Park Service, the Fish and Wildlife Service, the Bureau of Indian Affairs and the Bureau of Reclamation.

We will not consider lands in the National Park System, the Wildlife Refuge System, or Indian Trust Lands for sale under this initiative.

On May 21, 1982, the Board endorsed policies for the management of Interior Department lands, consistent with the Administration's property initiative.

Specifically, the Board considered and endorsed:

The approach of the Department of Interior Asset Management Program to place public lands and mineral resources in three categories:

- Retention
- Sale
- Further Study

The precise definition of types of land in each category will be reviewed by the Board Chairman.

The general policy of the Board is to assure that conveyances of unneeded Federal land are made at fair market value. Nevertheless, certain exceptions are recognized. The Department of Interior began its Good Neighbor Policy early in 1981. This program allows state and local governments to obtain unneeded public land at little or no cost. At the Board meeting it was decided that:

> All Good Neighbor requests received before March 1, 1982, will be given until September 1, 1982, to be perfected into formal applications. Applications that meet this deadline will be processed under existing Good Neighbor policies and procedures. Requests received before March 1, 1982, and not perfected by September 1, 1982, will be discontinued.
>
> Requests received after March 1, 1982, and future requests will be processed under more restrictive criteria to be developed by Interior. These applications will be reviewed by the Board if Interior recommends the conveyance at less than fair market value.

With respect to exchanges of public lands, the Board endorsed the following policy suggested by Interior:

> Lands that are classified for retention will not be available for exchange except to other Federal agencies or state or local governments, and then only under existing authorities for lands of equal value.
>
> Lands that are identified for sale will not generally be available for exchange except
>
> - if the property has been offered for sale for two years and not sold, or
> - if the property would be exchanged with the Forest Service under the boundary adjustment program, or
> - if in the exchange, the Federal government receives property that increases the saleability of a larger unit
>
> Lands being studies for either retention or disposal will not be available for exchange until after they have been placed in one of those two categories.

Exchanges which fall outside of these policies will be judged on their merits by the Board, after consideration and recommendation by the Department of the Interior.

In addition, the Board endorsed Interior's suggestions that

> Lands in Alaska not be subject to the asset management program at this time
>
> State grant proposals, including state indemnity selections are exempt from the asset management program
>
> Applications for transfers under the agriculture land laws (The Desert Land Act, The Carey Act and The General Indian Allotment Act) would continue to be accepted, recognizing that in all likelihood very little public land is eligible under these Acts for disposal.

Mr. **Noonan**. Thank you very much. I am sure we will be back to you.

Our next respondent is Mr. Tim Schultz, commissioner of Rio Blanco County, Colo. We are happy to have you here, Tim, to express the local viewpoint on this important subject. Tim.

STATEMENT OF TIM SCHULTZ, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES

Mr. **Schultz**. Thank you. It is a real opportunity and the local government appreciates the opportunity we have been given to be a part of this panel and present our viewpoints on some of the diverse views we have heard on the management of the public lands, the Federal properties.

I think a little bit of my background might help to explain where I am coming from, particularly as well as my representation of the National Association of Counties. I am a county commissioner from Rio Blanco County, Colo., which is on the western slope. It is a fairly large land county with a small population.

Approximately 80 percent of our land is federally owned, so there is a great impact upon our county government as well as throughout the West on how these lands are managed. In addition to that, I am a rancher. I live on private property that is surrounded by Federal BLM grazing lands.

I think our county shows a great example of the multiple use concepts that have been prevalent in the last few years. They have a tremendous amount of recreation, hunting, fishing, wilderness areas in our county. Ranching has long been a stable aspect of our economy.

In addition, we have 80 percent of the world's known high-grade oil shale reserves in Rio Blanco County. We have an oil field, we have coal and natural gas. So we are looking at very diverse uses of these Federal lands and any decision that we make at a Federal level as to how those lands are administered and how those lands are used greatly affects every citizen in our county as well as every citizen in the State of Colorado and eventually the people in the entire United States.

There are three key issues that local government wishes to present today. The first of those is that local officials must be involved in any type of decision that changes the management of the Federal lands. Local officials must be involved at all stages of the planning and development of that process, so that we can insure a direction that is consistent with local land use policies, that is consistent with the development of the types of communities that local officials are working for.

I think this is one important fact that might have been overlooked by all three of our people that gave papers today. Lack of local involvement to date has probably contributed as much as anything to some of the problems we see with land management and some of the complaints that have come out through the Sagebrush Rebellion in the West, these types of complaints from user groups. There has not been a significant concurrence or development of plans with local emphasis.

A second major point we would like to make is that discounted sales to local governmental entities must continue. It is an important avenue for us to develop, not only parks and recreation opportunities, but also to develop more jobs, to develop greater economic opportunities within our county so that more employment can be created, a larger tax base can be created, and local governmental entities will be better able to meet the financial and fiscal problems that are put upon them by the development of the Federal lands.

If we are asked to compete with private industry for these lands, it will be very difficult, if not impossible, for local government to obtain them and to, in the end, I think, benefit the Federal economy by the development of the economy within the local jurisdiction.

The third major item that we are concerned about is, we feel, a local advisory board or an advisory board of local officials should be set up nationally to work with the property review board. We think it is important, that as decisions are contemplated and being made about the sale of land, that local government should have an input at the highest level as to how this goes on.

In addition, we think that local officials should be consulted within each jurisdiction where a sale is proposed. Concurrence, on those sales or leases by local government should be a part of the Federal policy.

I would like to comment briefly on the three papers that we heard today. These are just personal responses from a local official and rancher, as to how I view the way they were presented. Initially, I would like to invite Dr. Stroup to come park in the parking lot of Rio Blanco County, and, hopefully, we would have a place for him up near the courthouse.

I think it is important that when we talk about the wealth of the landowner and the example that Dr. Stroup gave us of the buffalo, that we don't get caught up in maximizing the owners' wealth to the point of losing a national heritage such as the buffalo. We look at that as something that transcends more than one area and more than one use.

And I would see that the best use of the land seen at any one time, may respond more toward the immediate highest yield and not look at the long-range effect. There are some very large concerns that I have that people would maximize the profits to be gained, say, from an extremely large strip mine to obtain oil shale, and not look at the long-range effects of what could happen to the community if numbers of ranchers were forced to leave their property because of that.

A second question that I would have, centers around the amenity value and I am just wondering to myself, if large developments of privately held land which are currently Federal property are consistent with public values or public amenities. In our particular State a number of years ago, the people of Colorado elected not to have the Olympics in the State of Colorado. That was a decision that was hotly contested in the election, but I think was a decision based upon amenity values, and the people feeling very strongly that they did not want a rapid, large scale development of more ski areas, but preferred a more pristine environment.

So I think there has to be a look at the balancing there. Another area that I have concern with in the sale program is when we talk about just maximizing the Federal Treasury. If the Federal Treasury would capture the benefit of the sale of the property and thereby benefit all of the people in the country, I think in the same sentence we have to include the fact that local governments capture the cost of public expenditures that will be necessary to provide services to these areas.

This is particularly true, if local governments are involved in the decisionmaking process for the sale. To be more specific, if we are to just go out and sell a large tract in our particular areas of forest lands, which could be developed into a condominium development, without local concurrence it might fly directly into the face of our land use policies. We may not have adequate sewers, adequate water, these types of things to provide services.

In closing, I would agree with Mr. Harvey that long-range goals may best be accomplished by an agency that tends to transcend the special interest at one particular time or another, and can look from one administration to another, can look from one generation to another, to the types of goals that could very well be long range in nature. We should not simply allow the use created by the highest economic return to be the driving force behind public land management.

Mr. Clawson, I think, made a very important point that there is not a single solution to a complex problem, but that we probably need to look at a broad range of solutions. My final comment to that would be that all of the solutions that we look at have to involve local government. If we will work more closely with local officials and local government in making these key decisions in developing processes we can further enhance the potential for agreement and take away some of the bickering that we have had among competitive users and among various levels of government involving the public lands.

Thank you.

[The prepared statement of Mr. Schultz follows:]

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STATEMENT OF

TIM SCHULTZ

ON BEHALF OF

THE NATIONAL ASSOCIATION OF COUNTIES

PRESENTED FOR

THE WORKSHOP ON

PUBLIC LANDS PROTECTION AND MANAGEMENT

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

JUNE 4, 1982

Washington, D.C.

TESTIMONY OF TIM SCHULTZ ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES PRESENTED FOR THE WORKSHOP ON PUBLIC LANDS PROTECTION AND MANAGEMENT BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, JUNE 4, 1982

Mr. Chairman and Members of the Subcommittee:

My name is Tim Schultz, and I am a County Commissioner and rancher from Rio Blanco County, Colorado, which is located in the heart of the U.S. Oil Shale Development. I have been actively involved in Colorado Energy and Legislative activities. I am a member of the Governor's Blue Ribbon Citizens' Panel, the Colorado Criminal Justice Council, and the Colorado Jail Advisory Commission. I serve as a member of the Board of Directors of NACo's Western Interstate Region, which represents counties from the 13 Western States. I am also past Chairman of the Western Colorado Association of Governments, and presently serve as Co-Chairman of the National Bureau of Land Management Liaison Committee.

The National Association of Counties* is pleased to participate in this workshop on federal property ownership, management and disposal. This is an extremely important issue to the west, and will have a profound impact on counties throughout the country. The three topics before the Subcommittee for discussion - privatization, retention, and alternative management strategies - outline the major issues involved in this federal property review process.

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*The National Association of Counties is the only national organization representing county government in the United States. Through its membership urban, suburban, and rural counties join together to build effective, responsible county government.

The goals of the organization are to:

- improve county government;
- serve as the national spokesman for county government;
- act as a liaison between the nation's counties and other levels of government; and
- achieve public understanding of the role of counties in the federal system.

This Subcommittee is very familiar with the vital concern of counties across the country, and especially in the west, with legislation and activities that affects the over 700 million acres of federal land within their boundaries.

I come from a county that's 80 percent federal land. We have 18 counties in Colorado where the federal government owns over 50 percent of the land. To name a few: Mineral County is 94 percent federally owned; Hindsdale County 96 percent; Pitkin County, which contains Aspen, is 88 percent federal land. Outside Colorado, there are many other examples: Gila County, Arizona, is 97 percent federal lands; Kane County, Utah, 92 percent; Swain County, North Carolina, 70 percent; and Cook County, Minnesota, is 66 percent federally owned. This small sampling underscores that counties east and west exist side by side with large tracts of federal land.

Thus, the social and economic fabric of community life is closely tied in with the presence of public lands. Public lands counties are directly and, often, dramatically affected by federal land management policies, plans, and activities. Therefore, counties would be among the most directly impacted by privatization initiatives and alternative federal land management strategies.

NACo's longstanding policy is that counties have an important intergovernmental role to play in planning and managing the uses of the public lands. Counties generally have the land use planning and zoning authority in the unincorporated areas where public lands are located. The policies, plans and activities for public lands impact on adjacent land use activities. County officials have been elected to represent and express the economic, social and environmental concerns of local citizens directly affected by public land management decisions.

In general, NACo is inclined to look favorably on the general concept. proposed by the Reagan Administration on federal land management and disposal. Much of the philosophy behind this proposal is outlined in the privatization paper. However, we have reservations about certain specific aspects, and our reservations would have to be addressed before we could support these initiatives.

There are several aspects of the privatization process that we believe make sense for counties. We are strongly in favor of getting more land back on the county tax rolls, which would increase the county tax base and boost the provision of local government services. Further, a privatization-type initiative would require a comprehensive survey and review of federal land holdings, which would greatly enhance local land use planning and coordination with federal agencies. We certainly believe improvements can be made to expedite the disposal of surplus federal land. Finally, we have always endorsed making federal lands available to stimulate local economic and community development.

However, the overall privatization concept raises some serious concerns for counties. The impact on county ability to deliver governmental services could be staggering, and must be addressed.

Privatization would operate under free market conditions, and thus the sale of federal land would be on a fair market value basis, going to the highest bidder. The Reagan Administration has already proposed this in its 1983 Budget. Last February, OMB Director Stockman said at Senate hearings: "A ... policy change is that of elimination of nearly all real property discount conveyances to state, local, and non-profit entities for public benefit use."

Another underlying assumption of privatization theory is that public lands are mismanaged and government ownership is inefficient. In his February statement Stockman cited as one cause of this the government's policy of discounted transfers.

He said: "Since these property transfers are essentially free acquisitions there is no economic incentive for federal agencies to ... compete with private sector bidders to determine the most productive use." Another underlying assumption appears to be that because local governments receive these properties for virtually nothing, they don't put them to the uses for which they were intended.

First, the proposal to discontinue discounted transfer would almost totally eliminate the local use of federal land for public purposes. Local governments would be priced out of the market. Federal lands, if sold only at fair market value, would end up going to the highest bidder-often corporations, foreign investors, and multinational conglomerates - whose primary interest is not the welfare of the community, but to make a profit. Large public lands counties could be overrun with absentee landlords who don't have the stake in the community and local land use protections of these who live there and whose economic livelihood is there.

If a county cannot afford land for public purposes, essential economic development may not occur. In many cases, if a county can acquire the land, its public use could stimulate economic recovery and development which would ultimately be of far greater benefit to both the federal treasury and local community than a simple sale. These benefits point out how short sighted the proposal to eliminate discounts is.

There are hundreds of examples illustrating successful use of surplus federal land. The best are those that create jobs. Typical among hundreds of industrial parks from federal lands is the former Brookley Air Force Base in Mobile, Alabama, which also contains an airport and university.

Even park development can serve as a focal point to economic development, as is happening in South Miami, where a recreation area is a catalyst for urban renewal.

Under the new federalism, if counties are going to assume greater responsibilities, they will need adequate resources. These public purpose transfers are a very important resource. This is especially true in light of all the mandates on local governments.

For example, the Environmental Protection Agency regulations on how counties must deal with garbage can be expensive to enforce. So when the Interior Department announced its "Good Neighbor" program, more than 39 western communities asked for land to build waste facilities. Several others need water treatment plants. Federal employees and public lands users get their water from and dump garbage into municipal systems.

It is not correct to say local governments receive "something for nothing." Converting public lands for local public benefit is a costly process. Long-term operation and maintenance costs add to the obligation. Most local governments are very cautious about accepting land they are unable to take care of. If they now cannot afford the land, public benefit uses for industrial development, airports, housing, hospitals, schools, sewage treatment and other environmental services, and public recreation could simply cease. You cannot rely on the private sector to provide these essential services.

Another very serious concern for NACo is that the privatization proposals do not recognize a key, or even subsidiary, role for local government. NACo's position is that counties must be involved in the land management and disposal process at each stage, including initial planning. This also goes for any large scale alternative management strategies, such as long term leasing on the public lands. Before any privatization or alternative management strategies would be carried out, the impact on local communities must be assessed in coordination with local officials. Towards this end, we have asked the

Administration to create an advisory board of local officials to advise its Property Review Board. In any privatization plan, including the present Administration initiative, we also recommend the creation of local review committees to work with the federal Government. To a certain extent, a national policy of this type needs to be localized in nature. The federal Government must receive the concurrence of the local community.

In any action to privatize lands, the federal Government will need information as to how the economic and social fabric of a community will be affected, as well as its ability to extend property related services. For example, selling off large quantities of federal grazing lands at one time to the highest bidder might cause economic hardship for ranchers in an area, which in turn could lead to unemployment, private property foreclosures, and bankruptcies. Further, even if ranchers are given the first option to buy grazing lands, with special financing and prices, it might still be beyond the resources of the average rancher to buy the land.

Congress has recognized the role and interest of local government in federal land activities. The Federal Land Policy and Management Act (FLPMA) provides: "The Secretary shall, with public involvement ... develop and use plans ... for the use of the public lands." FLPMA requires consistency of BLM land use plans with local plans and outlines the requirements to closely involved local officials in the federal land use planning process.

There are several laws like FLPMA that not only provide for local consultation and consistency in federal land management and disposal, but also for the public purpose discount to local governments. Further these laws require Congressional approval for land sales over certain limits. We hope that they would be reviewed carefully before any recommendations for wholesale changes, ammendments or repeals are made.

Counties are also concerned with the impact of privatization valid existing rights and commodity and revenue-producing activities such as grazing, mineral development, and timbering. Without local input on the status of these rights and their holders, federal activities could seriously affect the economic health of an area. This in turn might require more services from a county, strapping already limited resources. The current statutes, by their local consistency and participation requirements, provide protection for the users of the public lands and their valid rights.

Any large scale action to change the management practices on the public lands will have deep and far reaching ramifications. The National Association of Counties hopes to work with both Congress and the Administration to insure that any such changes be carried out in an orderly way, so that local communities are not disrupted.

This completes my prepared remarks. I would be pleased to respond to any questions.

Mr. **Noonan**. Tim, thank you for a very strong statement on behalf of local involvement. Our next respondent is Mr. Rexford Resler, executive vice president, American Forestry Association. Rex.

STATEMENT OF REXFORD A. RESLER, EXECUTIVE VICE PRESIDENT, AMERICAN FORESTRY ASSOCIATION

Mr. **Resler**. Thank you, Pat. It is indeed an interesting challenge to attempt to respond in a few minutes to a very complex subject about which this Nation has been debating for centuries. I would like to say at the outset that the American Forestry Association is a citizens conservation organization which came into being in 1875 for the express purpose of trying to put some fetters on an unfettered free enterprise system.

I refer specifically to the condition of the forests at that time, the fact that they were being cut over and not reforested and had no fire protection system, circumstances of which we are well aware. Those conditions have changed drastically in this century. We find now an entirely different set of laws, a better communication system, a whole set of circumstances that are bringing about better management of the land.

Now, we are again debating the question of what to do about some of these Federal lands. I was intrigued by Dick Stroup's comments on the theory of the free enterprise system as it relates to some of the amenity values, some of the public values other than merely maximizing great return on investment.

I am a strong believer in the free enterprise system, but I recognize that—as I believe most people do—that there are certain inadequacies in the system and it is with those inadequacies that I am most concerned. I refer specifically to one comment he made in which he says it is realistic to criticize each magnitude of the private markets in governmental control and we can, in fact, predict the circumstances under which each will fail.

I think this is a very telling comment because neither system is perfect. Of course, our purpose here is to attempt to refine and improve on those systems. I would argue the flip side of the argument that I think two-thirds of the lands in the United States are now in private ownership and, furthermore, the one-third that is in Federal ownership has been in the main poorly managed.

I was intrigued by Dr. Clawson's point. I would never question his supreme judgment on economic matters, but I would feel that $500 billion value of public land assets may be on the conservative side. The fact of the matter is that we do indeed have tremendous national assets in these lands, the multiple use lands in the country, and they do need to be better managed.

I recall specifically the circumstances under which FLPMA, the National Forest Management Act, and prior to that the Resource Planning Act came into being. It was hotly debated, strenuously discussed by conservationists, interest groups of various types and, of course, Members of the Congress.

Out of that came some sound policy, in my judgment, but it also required a higher order of commitment by both the administration and the Congress. I would want to reinforce the point that Mike Harvey made earlier: We have not done an effective job of implementing those important pieces of legislation.

The bulk of the discussion thus far has had to do with Interior Department lands and I guess I would want to say that I am quite concerned. I make some references in this paper to the notion that many people are concerned about the probable long-term dissolution of the Federal land system, the multiple use land system.

Secretary Watt and others have said no; that we are talking about relatively minor adjustments. I think it would behoove the administration at the earliest point to try to establish criteria and let the public know precisely what is in mind. I would point out that we do support much of what is intended by this asset management program. We certainly support the logic of disposing of surplus Federal properties by grant, sale, or exchange.

We also support the logic of conveying to private, State, or local governments isolated tracts of Federal lands which cannot be effectively managed. We support the exchange of lands among the Federal agencies to consolidate management units and to improve the efficiency of management.

The problem I have is that there are different signals coming out of the administration, various sources through ecologists and elsewhere to suggest that there is an ulterior motive aimed at going much deeper than what is presented on the surface.

And I would like to close by merely saying that we do indeed support the logic of attempting to more effectively manage these public lands. We would like to see the process contained in RPA for the National Forest System and FLPMA develop by the simple process of establishing a revolving fund in which those lands that are retained could be managed much more efficiently.

I would have to say that, in my judgment, having worked with it for quite a few years, that successive administrations have offered a high order of benign neglect where these lands are concerned. Mike touched on a number of the problems.

I would like to see us attempt at least to try to refine the management of these systems that we, the public have decided to retain in Federal ownership and make them good neighbors as far as local institutions are concerned and make them more productive.

They are indeed valuable public properties, ones that I personally want to see passed on to future generations unimpaired and not too much diminished.

Thank you.

[The prepared statement of Mr. Resler follows:]

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PUBLIC LANDS: OWNERSHIP BY WHOM AND FOR WHAT?

It is an interesting challenge to attempt to respond in five minutes to the highly controversial, complex, and emotional subject of public lands ownership, its protection and management, its disposal, or some alternatives thereto when we have been debating these issues since the founding of this great nation.

Perhaps I should state at the outset that The American Forestry Association, a citizens conservation organization, came into being in 1875 for the express purpose of changing the destructive consequences of an unfettered free enterprise system. Forests were being gutted for only the biggest and best trees, with the lands left bare to erosion. Planting or reforestation systems were non-existent. There was no system of fire protection nor were there any institutions of higher education or research to which society could turn for answers or alternatives to the desecration of forests which was occurring regularly throughout the eastern United States. But there were a handful of dedicated visionaries who saw that the forces of the market place were woefully blind not only to public interests, but to the long term interests of the forest-based community.

True, all that was over a century ago. New laws, new political forces, new communication systems have come into being and, certainly, a new enlightenment of corporate self-interest has evolved. I do not draw a direct parallel between then and now because conditions are so vastly different; only one thing remains unchanged--the forces affecting the market place.

When I read Mr. Richard L. Stroup's "Defense of Asset Management: The Privatization Component," I see in statement after statement conclusions that market forces can bring into being high levels of productivity, promote the preservation of amenity and recreation values, encourage recovery of grazing land conditions, reduce costs to the consumer, and presumably in time materially reduce the national debt through the sale of "inefficiently managed" federal lands.

Presented by Rexford A. Resler, Executive Vice President, The American Forestry Association, in a panel discussion before the Senate Public Lands Subcommittee Workshop on Land Protection and Management, June 14, 1982.

His treatment of the motivating forces of the free enterprise system is in full accord with my studies of economic theory. And I have to agree with his conclusions about the vulnerability of elected officials to the pressures of special interest groups. Especially to the point, I believe, is the statement that follows: "So far we have seen that both private markets and governmental controls are imperfect. It is realistic to criticize each, and we can in fact predict the circumstances under which each will fail, and some of the results of each type of failure."

I am a strong believer in our free enterprise system and I want to see it strengthened by reducing the federal deficit, by lowering interest rates, by encouraging capital investments in plant modernization to increase productivity and to meet international competition, and I want to see us develop our natural resources on which our whole economic system depends. But I disagree wholeheartedly with the notion being propounded that sale of valuable multiple use system lands is the way to make it happen.

Two-thirds of the land base is already in private ownership. Of the one-third in public ownership, some 740 million acres, over 200 million acres are now included in national systems (National Parks, Refuges, and Wildernesses) which are unaffected by Executive Order 12348. But there is some 460 million acres of land under review to determine how much should be put on the block, or possibly, retained. To raise this issue again after the strenuous debate that led to passage of the Federal Land Policy and Management Act of 1976, the Renewable Resources Planning Act of 1974, and the National Forest Management Act of 1976, all of which declare it to be the national purpose to retain these lands in the public estate, is an exercise in futility guaranteed to excite a storm of opposition which will divert us all from the real issues we face--economic recovery.

Dr. Clawson defines five alternative strategies for the public lands. I wish to call attention to his estimate of the value of the lands and resources administered by the BLM and the Forest Service--for the benefit of each citizen of these United States and hopefully of all future generations. He estimates the current asset value of some $500 billion, and "In real (constant dollars) terms that value has risen by 22 times since the mid-1920's." His point is that the agencies suddenly found themselves managers of a vast pool of capital for which they have had little political guidance and were not well-equipped to handle. I believe Dr. Clawson makes a crucial point. What other segment of the free enterprise system can boast such phenomenal growth? Just think what could have been achieved had the agencies received the guidance and support in the form of manpower and investment capital that this huge public asset deserves.

The five alternatives discussed include improved management of the federal lands under present authorities and planning processes; gradual turnover to the states; dissolution of the federal lands by turnover to the profit and non-profit organizations and individuals; management through some combination of public/private corporations; and long-term leasing arrangements.

Each of these alternatives, or various combinations thereof, are based on the notion that the public lands must be managed with greater economic efficiency, or alternatively, be disposed of to reduce the cost burden of protecting and managing the public lands. These alternatives and the proposal for long-term dissolution of the multiple use land systems are founded on the bedrock of greater economic efficiency despite the fact that all recent enactments (RPA, NFMA and FLPMA) clearly and explicitly articulate national policies that (1) such lands shall be retained in federal ownership, but provide for the disposal of certain lands found to be excess to the national need, and (2) that such lands shall be managed under the principle of multiple use/sustained yield so that the lands and resources are utilized in combinations that will best meet the needs of the American public now and for all future generations, and "not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output."

National policy for these lands have been clearly defined. The initiative for defining the national goals and directions for these public lands came from the Congress, not from the Administration in power. These enactments were the hard fought conclusions of a wide array of citizen interests and user groups and, in my judgment, provide for future direction that will ensure the greatest good for the greatest number of people in the long run.

The thrust for change, for dissolution of these systems by whatever means, stems from two sources: (1) the Sagebrush Rebellion and (2) the misguided "Asset Management" policy designed to dispose of federal lands presumably to retire portions of the national debt. Both of these policies, in varying degrees, fly in the face of soundly based national policy and public desire. And it is my opinion, and declared purpose, that they shall fail the test of public support.

I do not suggest that the present system of public ownership, nor that the agencies responsible for the lands, are perfect or beyond improvement. I do believe that the systems, the objectives for management, the planning process, and the legislative authorities are sound, that they will become more effective over time, and that they will assure future generations the opportunity to use and enjoy their federal estate, their heritage.

I believe D. Michael Harvey's paper captures the essence of the issue which this workshop is addressing. His paper, while devoted to the lands administered by the Bureau of Land Management, applies directly to the national forest system lands administered by the Forest Service, USDA.

I wish to underscore a few points addressed in his paper.

We believe that the legislation affecting the multiple use lands system should not be changed; they should be fully implemented. And that will require time and resources, i.e., money and manpower. It will take responsible leadership by the Administration and a commitment by Congress to see its creation fully and effectively implemented. It seems clear also that it will require public vigilance and continuing support to achieve the long-term public benefits envisioned in FLPMA and RPA/NFMA.

Only the Federal Government would continue to manage the huge national assets of these public lands as we do. Despite the fact that long range planning processes are in effect, these lands are managed under the annual budget process the same as all other federal expenditures. These lands generate far more revenue than they cost to operate. For all practical purposes, they represent the only source of "profit" in the whole federal system, yet they are subject to an annualized perspective by the Administration, by every Administration. Long-term capital investments are treated as annual operating expenses. Budget cuts allocated by the Administration through the Office of Management and Budget are allocated across departments, seemingly without regard to the economic consequences of such cuts. I contend that the "failures" of the agencies to achieve levels of resource management and protection desired by both the public--and by user groups--can be laid directly to the lack of leadership by successive Administrations to fully implement the process defined in existing law. The green eyeshade mentality, unless changed by Congress, shall continue, interrupted now and then by additional schemes to bring about economic efficiency through turnover of these lands to the private sector.

We need to establish a revolving fund of ample size to accommodate the management of this nation's most valuable asset--its public land base. The long range planning process defined in RPA provides the vehicle for a multi-year budget (a rolling five-year period) which could assure continuity of programs and greater cost effectiveness of management. The RPA process should be extended to cover the national resource lands administered by the BLM.

It is time to improve the efficiency of management of both the national resource lands and the national forest system lands, not to seek a quick fix by disposal to the private sector.

In conclusion, I wish to make clear that we support the logic of disposing of surplus federal property by grant, sale, or by exchange. We also support the logic of conveying to private, state or local governments isolated tracts of federal lands which cannot be effectively managed. We support the exchange of lands among the federal agencies to consolidate management units and to improve efficiency of management.

We strenuously oppose, however, the logic that the multiple use lands systems should be sold or otherwise conveyed to the private sector, either for profit or not-for-profit organizations, as a means for raising revenue, or converting such lands to a "higher economic purpose," or merely dissolving the federal estates as a cost cutting device.

The federal estate has evolved over three centuries. That which remains is a priceless heritage which we must pass on to future generations, undiminished, unimpaired. I predict that those who seek to significantly reduce the federal estate shall experience the political wrath of an aroused American public.

Mr. NOONAN. Thank you, Rex, for those comments representing, I know, many years of experience in resource management.

Our next respondent is Mr. Courtland Lee, consulting geologist, representing the Minerals Exploration Coalition.

STATEMENT OF COURTLAND LEE, CONSULTING GEOLOGIST, REPRESENTING THE MINERALS EXPLORATION COALITION

Mr. LEE. I would like to address the third dimension of public lands, the subsurface estate. I found particularly interesting this morning in tallying up the total amount of acreage of public land the 60 to 80 million acres of subsurface of the estate was not even mentioned. And this has been a traditional problem with the managing of the mineral estate of the public lands. It just gets swept under the rug.

The group that I am with represents several hundred geologists. The mission of these people particularly is to find those resources that we will need in the future, particularly mineral resources, and generally the nonfuel mineral resources, although we have some people skilled in energy resources, too.

The decades in front of us are going to be a tremendous challenge to geologists to continue to supply these materials. The people in our profession are very much concerned about that. Our organization is only 3 years old. I should tell you something: I am in a group of organizations, some of which are 50 years old and go back to recognize problems.

I think we face critical resource needs, particularly mineral resources, as this country matures into an industrial complex and the Third World countries seek to achieve their own status. We have always been able to acquire the minerals we use from those Third World countries, but as they use their own, we will have to compete on the open world market in future years.

This will be generally a new process for us, if you look at the historic period of 100 years. The public lands must play an important part in supplying these potentially economic concentrations of resources. If you look at the geology of the United States where the mountain processes make mineralization likely, it becomes a case of, if you are looking for elephants you go to elephant country—and public lands represent elephant country.

So you can say, well, one-third of the Nation's land is in public ownership and from a mineralist's perspective that may be two-thirds of the Nation's minerals are in public lands. Now, I am addressing nonfuel minerals. Certainly, with oil shale deposits you could get up to 90 percent or higher of being found on public lands.

So I think the importance of these public lands to the mineral sector has to be kept in mind. We simply do not know enough detail about public lands to say today or anytime in the future where the hard-to-find mineral resources are located under any particular economic situation.

If you take a look at oil, the price went from $2.50 to $10 a barrel, bringing into account a whole new resource concept. Potash in World War I went from $10 to $400 a ton. The geologist always has to deal with these economic fluctuations and economics are an important part of our resource. Unlike some of the surface resources which you can photograph or count, it takes quite a bit of research and exploration to delineate any kind of a mineral resource.

I think the original Privatization Act went back to the 1872 mining law which most people in public lands know a great deal about. But a figure that I would like to bring to mind, which is often swept under the rug is that since 1866 or 1868, which is actually the time when they started patenting lands, only 3 to 4 million acres of public lands had ever been patented for mineral purposes.

This includes oil and gas, mining claims, coal mining claims, things that are done by the boards and they have not issued those since 1910 or the 1920 Leasing Act came in later. And this is less than 5 percent of the existing wilderness, not counting all of the study areas—this is just one of the more recent moves to designate a land today for a certain use.

And since 1866 the mineral sector has only taken 3½ to 4 million acres of public lands under the patenting provisions of the general mining laws. That brings up a point: Although minerals get a lot of attention, there is really not a land-intensive industry. We do not use much land and where we do find minerals, it is usually extremely valuable. That is the nature of it. It is just not cost effective to go after it if it has a low unit value. There are some exceptions like sand and gravel, but they come under a sales provision.

There are several congressional directives, the Minerals Policy Act of 1970 and the more recent Minerals Policy Act of 1980, which pretty well set out congressional policy as to how we go about the broad concept of mineral development. I will not get into that.

I also think there is some very important legislation that has been ignored by both the Interior Department and perhaps the Oversight in Congress in cleaning up some of the mineral estates under the BLM Organic Act. I think they wisely put in provisions to return the surface under this fractional mineral estates where the Federal Government owns just 20 percent of the subsurface, the surface under petition to have that mineral estate restored.

I think that in our review of public lands, we need to look at cleaning up the mineral estate. It is fractured; it is complicated.

Public lands management has generally ignored the needs of the private sector, not just in turning over lands but assisting them in the management, particularly of the title to understand what they have in situations.

To recap and conclude with a couple of comments, I think there are some general fallacies and points to be raised about the mineral estate. I think the first is the mining. It does not use a great deal of land. It is really nonland intensive.

There are a few exceptions, but the figure is less than 1 percent of all of the land in the United States is used.

I think there is what we call the faucet concept where, if we need to suddenly produce more minerals, we can just turn on the faucet. The exploration side of the development sector knows very well that it often takes decades to bring some of these things in. You just cannot under wise public land policy, in my point of view, put yourself in the position where you would require a faucet concept turning on, because it will not work.

Our geologists need time to test various theories. We don't know what is out there. Somebody will design one theory and it will fail and we will come up with another one. I think a lot of arbitrary restrictions have been passed against presumed, wholesale destruction and I think the public land law has not yet interfaced. Along with what Mike Harvey was saying earlier, they have passed several very important pieces of land planning legislation and the last use sector to be really merged into this is the minerals.

We have decades of specific land orders that say that lands are withdrawn under the mining laws. You either can go in or you cannot go in. We have not yet balanced out land use planning under the new acts with these old withdrawal concepts.

In that sense I think Secretary Watt is making the right decision in removing a lot of these restrictions, because they simply do not mesh with the new legislation that we have on the books.

Mr. **NOONAN**. Thank you.

Our next respondent is Dr. John Barber, executive vice president, Society of American Foresters. John.

STATEMENT OF DR. JOHN C. BARBER, EXECUTIVE VICE PRESIDENT, SOCIETY OF AMERICAN FORESTERS

Dr. **BARBER**. First of all, I think it is very important to put this whole discussion of the privatization of public land needs within the framework of national goals and policies. I am not really sure what national goals and policies are, but I think they are probably best defined in terms of existing legislation authorities under which the Federal agencies operate.

So it seems that the first step would be to decide whether we want to change the direction that has been set by existing legislation. If we can agree that we want to change the direction then we can proceed to determine the shape and magnitude of the change.

Of course, privatization is one approach. There seemed to be a fairly general consensus that there are thousands of parcels of lands that need to be disposed of and gotten out of Government ownership for many reasons. As Secretary Watt talked this morning, it seemed as though that was really all he was talking about.

But as Rex has pointed out, there seems to be somewhere behind that a further agenda in terms of additional disposal. These sorts of things have not been spelled out.

The question is: Are we talking about skimming off the cream of Federal lands and transferring them to private ownership, thus leaving the Federal estate in poorer shape than it is now and more difficult to manage?

Does it deal with the question of mineral rights that has just been discussed? Will the States get refusal on the transfers inasmuch as the Administration's intent is to transfer more responsibility and obligation to the State government?

Then the question comes up where is the analysis of a market impact on the leasing of large amounts of Federal lands on the presently depressed real estate market and what would be the effect of attracting private capital to the acquisition of these public disposals rather than putting them into home mortgages or increasing the productivity of that industry?

I suggest that if there is a rationale for the sale of public lands it might be appropriate to look at taking the private approach to this and that would be to develop the logic that we would do it in the most efficient way possible. We would first select those public lands that are highly productive and offer the best possibility for management and return to the Treasury.

We would place those under intensive management and then we would take the lands that do not offer a positive return to the Treasury and make those available to private sector and perhaps through incentive, innovation, and management that real estate can extract some income for the economy that cannot be arrived at otherwise.

And, of course, there is always a certain amount of residual land that has to remain in some form of custodial relationship. There also has been very little mention of constraints that would be placed on land that might be transferred in terms of assuring the collective rights of the individuals of the public who own them.

Dr. Stroup did not get into his presentation the comparison he made in his paper of the person who, when he buys a car, makes a better vote with General Motors than when he elects his Congressman. An interesting comparison, was as American car buyers voted with millions of Volkswagen and Datsun employers to tell the automotive industry that private enterprise ought to respond. In 1980, a decade later, they began to respond but they still have not recovered.

If does seem to me that private ownership per se is not necessarily an improvement in management if the manager is given the resources and the goals and targets with which he can manage his resources.

I think the comment that Mike Harvey made about public ownership protecting the long-term value of the market does not recognize what is very critical to the whole question of public ownership.

I think we have a parallel situation in agriculture where, at the present, the farmers tend to be neglecting their conservation practices with the consequent loss of soil in the form of erosion and in terms of long-term productivity. It is not that they are making bad decisions in terms of short-term economics, they are making good decisions, because they cannot afford that investment.

But when it comes to managing the public access, I think that we still have to look ahead to the long-term and perhaps sacrifice some short-term yields in order to ensure the long-term productivity of our resources.

Marion Clawson, as usual, has come up with some rather innovative ideas and his suggestion of a pullback where we might lease or dispose of public lands is certainly a challenging one. I would hate to be the person that decides how you reach equity among corporations, large groups and individuals who want to participate. But, certainly, I think it is an idea worthy of some exploration and it certainly would keep people under the constraint of reasonableness as they made their choices of areas and management of those areas.

I think in summary that there is a public interest to be protected now and in the future and it seems to me that the argument for retention of the majority of the public lands and public ownerships is persuasive. We have to recognize public lands should be under a continuing review to provide the best management possible to benefit the public and to dispose of, exchange or acquire lands needed to be developed in the public interest.

But it is most important that the administration in power and the Congress fulfills its responsibility to manage these public assets in a wise and prudent manner. Thank you.

[The prepared statement of Dr. Barber follows:]

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RESPONSE [1]

PANEL II: PUBLIC LANDS: OWNERSHIP BY WHOM AND FOR WHAT?

John C. Barber
Executive Vice President
Society of American Foresters

Any discussion of the privitization of public lands needs to be set within the framework of current national goals and policies. These are best defined in existing legislation and authorities under which federal agencies operate. A first step would be to decide whether we should change the present direction for the management of our public land assets. If we can agree that we want to change direction, then we can proceed to determine the shape and magnitude of the changes which are needed. Privitization is one proposal for change.

I believe that there is general agreement that there are thousands of parcels which should be disposed of by the government: isolated tracts, those needed for community expansion, cropland, etc. That this is widely recognized is evidenced by S. 705 and H.R. 3021 which would expedite the land transfer process for the Forest Service. But beyond this general agreement, it is difficult to comment because the specifics have yet to be spelled out. Are we talking about skimming off the cream of federal lands for transfer to private ownership, thus leaving the federal estate in a condition which is difficult and less efficient to manage? Does the privitization proposal include the sale of mineral rights as well as severable surface assets along with the land? In line with the administration's emphasis on transferring responsibility to state government, will the states have a first refusal on any sales or other transfers? Where is the analysis of market impacts of releasing large amounts of federal lands on a presently depressed real estate market? What will be the effect of attracting private investment capital away from investments in industrial productive capacity or home mortgages? Several facets seem counter to the administration's efforts to get the economy moving.

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[1] This statement represents the personal views of the author and is not a position of the Society of American Foresters.

If there is a rationale for the sale of public lands, it would seem that there would be a logic for doing it in the most business-like way possible. First, select and place under intensive management those public lands that are highly productive and offer the highest potential for continued annual income to the public treasury. Second, place those lands of lower productivity and marginal use up for disposal so that the private sector can have the opportunity to demonstrate that incentive, innovation and amenities can be made a paying proposition and benefit the nation. Then, I would assume that any residual lands would stay in custodial public ownership.

In privitization materials available to me, I was unable to find any specific onstraints on future use of lands that might be transferred to insure that the public interest would be protected in the long run. Such constraints must be considered if we are to recognize the collective rights of the individual citizens who are now the owners of these public assets.

In his paper, Dr. Stroup presented an analogy of the individual's relationship with Congress along side his relationship with General Motors. He noted that in both cases the individual had very little input, but a person would be more concerned about buying a car from GM than his vote for a Congressman because the wrong decision would have a direct impact on him. There is the implicit assumption that GM would respond in turn to the buyers. I would like to use this analogy to make another point. For more than a decade, car buyers sent millions of signals to GM and the automotive industry each time they bought a VW, Toyota or Datsun. Only when the U.S. automotive industry was in deep troupble because of a lack of foresight and investment did GM begin to compete. As reflected by the current state of the auto industry, many American car buyers still think that domestic auto producers have not met the competition. Is this how we can expect private enterprise to respond to long term national needs if they acquire the public lands? I suggest that private enterprise per se provides no assurance that the public interest will be given high priority.

Mike Harvey makes a key point that public ownership protects the long term values which the market does not recognize, such things as aesthetic values, water yields, and non-game wildlife values. Many of our public lands were set aside because past decisions in the private sector often followed the straightforward economic approach of maximizing short term gain through the liquidation of assets with no reinvestment to assure the continued productivity of the land. A similar situation exists in agriculture where farmers are neglecting conservation practices with consequent erosion and loss of inherent productive capacity because those practices are not cost effective when viewed from the short term annual cropping viewpoint.

Harvey also makes the point that a large part of the public lands budgets are items that should be treated as capital investments, not annual operating costs. I go a step further and stress that often costs of management are not allocated to the proper function. Typical of this is that road costs are often looked upon as being timber costs, when in fact they are capital investments to provide access for all management purposes - recreation, pest control, fire, hunting, fishing, etc. Similarly, modification of silvicultural practices to increase water yield, improve wildlife habitat, or to protect aesthetic values may increase management costs, but the added costs are not clearly identified with the benefitting functions.

Marion Clawson best summarized the current status of public land management by noting that nearly everyone agrees that the management of the public lands is to some degree unsatisfactory! But there is no general agreement on what changes should be made, how, or by whom. In his usual manner, he has advanced some ideas that are good food for thought.

First, long term leasing of land is an approach that should be given more consideration in managing the public lands. While there are many precedents for this, long term leases have not generally been used to provide the full range of management functions for substantial areas of public lands. It is an idea worthy of more attention. The potential is great for increasing returns to the treasury while at the same time reducing the management costs to the public.

Second, the innovative "pull-back" scheme is an intriguing approach to putting "constraints of reasonableness" on the demands and plans of potential lessees. At first glance there appear to be some problems of equity between consumptive and non-consumptive uses. There is also the problem of individual interests versus those of organized groups, and groups of differing size and financial backing. Another point for clarification is the relationship of leasing to the land management planning process. Will planning be completed before leases are offered? Will the uses of leased lands be restricted to the planning objectives? Or will the lessee be permitted to change the use so long as he meets environmental protection standards?

In summary, there is a public interest to be protected now and in the future. The argument for retention of the majority of public lands in public ownership is persuasive. However, it should be recognized that there is need for a continuing review of the policies which guide the management of the public lands in order to maximize public benefits through the best management possible. The sale, exchange, or acquisition of land are tools which should continue to be used to manage these lands in the public interest. Most important, the Administration and the Congress must fulfill their responsibilities to manage these public assets in a wise and prudent manner.

Mr. **NOONAN**. Thank you, John. Our next respondent in the order of the agenda is Mr. Jack Berryman, the executive vice president, International Association of Fish and Wildlife Agencies. Jack.

STATEMENT OF JACK BERRYMAN, EXECUTIVE VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. **BERRYMAN**. Thank you, Mr. Chairman. We appreciate this opportunity to represent in this workshop the International Association of Fish and Wildlife Agencies, founded in 1902, which is a voluntary organization consisting of the fish and wildlife managing agencies of the State, provincial, and Federal governments of the United States, Canada, and Mexico.

Mr. **NOONAN**. Jack please talk in the microphone as much as you can.

Mr. **BERRYMAN**. All 50 State fish and wildlife agencies are members and collectively represent millions of sportsmen. On reason for our very strong interest in any measure that affects fish and wildlife and their habitats is that our member agencies have the legal and trust responsibility for the management of these resources.

At the outset, let me indicate that we recognize that our public lands must be managed to produce a wide range of goods and services and to do so economically; that there is need for improvement in the management of public lands; and that there is a legitimate need for transfer of some parcels to State or to private ownership.

As other speakers have pointed out, there is dissatisfaction with the present public land policy and public land management practices. There is need for change. Nevertheless, as an association we are firmly opposed to any large-scale transfer of land to the States or to private interests.

The privatization of public lands is not exclusively a Western issue. Citizens of other regions believe they too have a vested interest in the public lands and that the opportunities for their use and enjoyment should accrue to all Americans, as well as the benefits from any economic returns resulting from commercial uses.

Much of the fish and wildlife habitat in the Western United States occurs on public lands. Much of the fishing and hunting takes place on these same lands and not just by the residents of the Western public land States, but by an increasing number of nonresident fisherman and hunters.

By fish and wildlife, I mean not only those forms that are harvested as game or controlled because of depredations, but also the nongame forms. Many of the nongame forms occur on these same lands and are enjoyed by people from all corners of the Nation. Our principal concern, therefore, is with the maintenance of the habitat for our fish and wildlife resources as well as the maintenance of public access for the citizens of the entire United States, whether to hunt, fish, or simply to enjoy.

Since settlement of the West and statehood for the Lower 48 States, there have developed a matrix of laws to protect fish and wildlife habitat for a balanced multiple use. These laws and regulations govern the uses of the national forests and of the lands administered by the Bureau of Land Management.

Some provide specific protection to fish and wildlife species. Others assure the kind of land usage that protects the habitat for these resources as well as providing public access to these lands. These are not limited to laws which govern the Forest Service, the Bureau of Land Management, and the Fish and Wildlife Service.

Rather, they cut across many areas of responsibility and provide the jurisdictional base by which these lands are administered. It has taken decade after decade after decade to hammer out and implement this complex of laws and regulations.

While it is our firm conviction that the State fish and wildlife agencies have the professional capability to manage fish and resident wildlife within their borders, the States do not have uniform laws which would supplant or provide the same degree of fish and wildlife habitat protection and assured access by the public as do existing Federal statutes. Further, the State fish and wildlife agencies and their sister land managing agencies do not have the funding to assume the responsibility for the added tasks.

From the standpoint of the possible impact of privatization upon fish and wildlife resources, we believe there are a number of questions that must be considered very carefully.

One, are State lands laws now adequate to protect fish and wildlife habitats and assure public access? Will the State legislators be inclined to pass the necessary laws and could they realistically provide funding?

Two, what public access policies now exist on State owned and administered lands?

Three, would these lands be available to the public if they passed into private ownership?

Four, are the State land agencies adequately staffed? How well are State lands now being managed?

Before closing, I want to comment that we have talked philosophically or conceptually about a number of points, but we have not been looking at the impact of how the proposed changes or suggested changes will impact upon the resources upon which this Nation depends.

There is need for careful study and hard decisions in all quarters. The matter was studied very carefully a number of years ago by the Public Land Law Review Commission. And had the major recommendations of that Commission been carried out it is not likely we would now have the present difficulties.

In our view, the goal should be to improve not to destroy an established system of land resource management which despite known and mainly minor deficiencies has been and is the envy of the world.

Thank you very much.

[The prepared statement of Mr. Berryman follows:]

STATEMENT OF JACK H. BERRYMAN, EXECUTIVE VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES, AT THE SENATE PUBLIC LANDS SUBCOMMITTEE WORKSHOP ON LAND PROTECTION AND MANAGEMENT, JUNE 14, 1932 WASHINGTON, DC

The International Association of Fish and Wildlife Agencies, founded in 1902, is a voluntary organization consisting of the fish and wildlife managing agencies of the state, provincial and federal governments of the United States, Canada and Mexico. All fifty state fish and wildlife agencies are members and collectively represent millions of sportsmen. One reason for our stong interest in any measure that affects fish and wildlife and their habitats is that our member agencies have the legal and trust responsibility for the management of these resources. The Association does not presume to speak for any individual state nor to interfere in its internal processes. Rather, we represent the collective views of our member agencies on issues where there is a consensus.

At the outset let me indicate that we recognize that our public lands must be managed to produce a wide range of goods and services, and to do so economically; that there is need for improvement in the management of public lands; and that there is legitimate need for the transfer of some parcels to state or to private ownership. As other speakers have pointed out, there is dissatisfaction with present public land policy and public land management practices. There is need for change. Nevertheless, as an Association we are firmly opposed to any large-scale transfer of land to the states or to private interests. This position was taken by adoption of Resolution Number 5 at the Association's annual business meeting on September 26, 1980. A copy is appended to this statement (APPENDIX 1).

Lest we appear to be taking a dichotomous position, let me explain that one of the highest priority concerns of this Association is safe-guarding state authority and responsibility for fish and wildlife management. We have consistently taken legislative positions in support of that objective and have intervened in over 20 legal actions in the past decade in an effort to avoid erosion of state authority and to curb increasing federal intrusion into the management of fish and wildlife resources. But, we recognize that our dual system of government depends on a healthy and dynamic federalism--that is, vigorous state and federal governments, each operating within their proper spheres.

The privatization of public lands is not exclusively a western issue. Citizens of other regions believe they too have a vested interest in the public lands and that the opportunities for their use and enjoyment should accrue to all Americans, as well as the benefits from any economic returns resulting from commercial uses.

Much of the fish and wildlife habitat in the western United States occurs on public lands. Much of the fishing and hunting takes place on these same lands and not just by the residents of the western public land states, but by an increasing number of non-resident fishermen and hunters. By fish and wildlife, I mean not only those forms that are harvested as game or controlled because of depredations, but also the non-game forms. Many of the non-game forms occur on these same lands and are enjoyed by people from all corners of the nation. Our principal concern, therefore, is with the maintenance of the habitat for our fish and wildlife resources as well as the maintenance of public access for the citizens of the entire United States--whether to hunt, fish or simply to enjoy.

Since settlement of the west and statehood for the lower 45 states there have developed a matrix of laws to protect fish and wildlife habitat and provide for balanced multiple use. These laws and regulations govern the uses of the national forests and of the lands administered by the Bureau of Land Management. Some provide specific protection to fish and wildlife species. Others assure the kind of land usage that protects the habitat for these resources as well as providing public access to these lands. These are not limited to laws which govern the Forest Service, the Bureau of Land Management and the Fish and Wildlife Service. Rather they cut across many areas of responsibility and provide the jurisdictional base by which these lands are administered. It has taken decade after decade after decade to hammer out and implement this complex of laws and regulations.

While it is our firm conviction that the state fish and wildlife agencies have the professional capability to manage fish and resident wildlife within their borders, the states do not have uniform laws which would supplant or provide the same degree of fish and wildlife habitat protection and assured access by the public as do existing federal statutes. Further, the state fish and wildlife agencies and their sister land managing agencies do not have the funding to assume the responsibility for the added tasks.

We are fearful that if the "privatization" issue goes beyond improvement of management and threatens the actual control or ownership of public lands, there will be a polarization of interests and support. There will be a sharp divisiveness between the users, mostly located in the west, and legitimate conservation interests located in all 50 states.

From the standpoint of the possible impact of "privatization" upon fish and wildlife resources we believe there are a number of questions that must be considered very carefully:

1. Are state land laws now adequate to protect fish and wildlife habitats and assure public access? Will the state legislators be

inclined to pass the necessary laws and could they realistically provide funding?

2. What public access policies now exist on state owned and administered lands?

3. Would these lands be available to the public if they passed into private ownership?

4. Are the state land agencies adequately staffed? How well are state lands now being managed?

We see little point in debating the philosophical question of private vs public management. Rather, we are considering in a specific and pratical sense how "privatization" of public lands may impact upon fish and wildlife resources.

There is need for very careful study and some hard decisions in all quarters. The matter was studied very carefully a number of years ago by the Public Land Law Review Commission. And, had the major recommendations of that Commission been carried out it is not likely we would now have the present difficulties. In our view the goal should to be improve, not to destroy an established system of land resource management, which despite known and mainly minor deficiencies, has been and is the envy of the world.

APPENDIX I

Resolution No. 5 *

Transfers of Federal Lands to the States

WHEREAS, legislation introduced in the U.S. Congress would transfer ownership of certain categories of Federal lands in the West to the states; and

WHEREAS, some states have enacted similar legislation or have it under consideration; and

WHEREAS, these lands are highly valuable resources which merit scientific management of a scope and quality believed to be currently beyond the capabilities of the state governments; and

WHEREAS, the expenditure of Federal funds for roads and trails, fire suppression and presuppression, and range, watershed and wildlife management and these lands may exceed the revenues from them and could become financial burdens for the states if the ownerships were transferred; and

WHEREAS, the states would lose significant incomes from payments in lieu of taxes, forest receipts, and mineral royalties; and

WHEREAS, existing laws provide for these lands to be retained in Federal ownership for multiple use management for the benefit of the largest number of citizens; and

NOW, THEREFORE, BE IT RESOLVED that the International Association of Fish and Wildlife Agencies hereby expresses its firm opposition to the large-scale transfer of western Federal lands to the states other than those lands authorized to be conveyed to the states in their statehood acts.

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* Adopted by the International Association of Fish and Wildlife Agencies at its 70th Annual Convention, Louisville, Kentucky, September 26, 1980.

Mr. Noonan. Thank you.

Our final respondent is Mr. Derrick Crandall, president, American Recreation Coalition. Derrick.

STATEMENT OF DERRICK CRANDALL, PRESIDENT, AMERICAN RECREATION COALITION

Mr. Crandall. Thank you, Pat. First of all, let me just underscore that the public lands are of tremendous value to Americans, both today and tomorrow. Our national parks, our national forests, the Corps of Engineer projects BLM lands and other public lands, provide for the hundreds and hundreds and millions of recreational visitor days each year.

This is by easterners as well as by westerners and by the elderly as well as the young, by families, by groups of friends and by visitors from other nations. The public lands also support a very large and important part of the recreation industry in America, which is one-quarter of a trillion dollars per year in total economic activities from hotels and campgrounds outside Yellowstone and other national parks, to guides and outfitters, that actually utilize the public lands, and equipment manufacturers to provide to the consumers the equipment used in the national parks and national forests, to concessioners who operate the facilities and provide services within the national parks.

The Federal Government has been a barrier at times to meeting the recreational needs of Americans on public lands. As one example, the ski industry in the United States is based heavily on the public lands. Upwards of one-half of all the ski visitor days are actually occurring on federally held lands on the U.S. Forest Service lands and for many years it has been a constrained market to develop new ski areas.

We have a vested interest in the debate over the future of public lands and we are also faced by a paradox. We believe that market forces could help to correct inadequate resource management activities on public lands—that would refer to all users, both commodity and noncommodity.

We also recognize that consumptive uses tend to overshadow amenities and other nonconsumptive activities in the marketplace. I guess what I would say there is, it is short term, in fact, getting back to Mike Harvey's paper, the short-term economy is often favored in our consumptive activities and commodity production and, in fact, can preclude the long-range amenity protection that might have more lasting value to the American public.

We do believe that the Federal Government has a role and should define parameters for the use of public lands adjusting for public priorities and in that way constraining certain marketplace activities. However, we also believe there is a danger of injecting too much of the Washington value in endorsing certain types of recreation as good and penalizing the recreation that is not good.

One of the points that Marion Clawson made in his paper is that he obviously favored dealing with long-term leases. We are attracted to that kind of concept. It gets around the basic difficulties that the recreation industry has at this point in recovering the invested capital on the public lands. There is a need to amortize those costs over time and, perhaps, some increase in the scope and the length of the leases would help to get at that.

One of the concepts that occurs to us would be that when you are talking about leasing you have the ability to in effect mirror the multiple use management system that we have currently under public ownership and in the private sector. You could, in fact, lease a particular parcel of land for several productions, for several different uses at the same time.

We are also attracted to the idea that leasing would obviate, eliminate the possible problem 10 or 20 years from now when a particular parcel of property which now has low amenity value, low perceived public uses would, in fact, be thought to be valued differently because of the changes in recreational trends and adjusted patterns.

Finally, I want to underscore the point that was made in several papers and it was made also by Rex Resler that the natural resource planning procedures put in place by FLPMA and the RPA program are processes which we believe can greatly assist the long-range natural resource management of the Nation's lands.

We, like Rex, believe there is some need to get beyond the annual appropriation process and a current seeming disaffection for what we have now as a budget mechanism. At an appropriate time we need to look at how we can take the natural resource decisions, which are and which should be looked upon as long-term capital investment type of decisions, out of the annual appropriation practice.

With that, I have some questions. Should they wait?

Mr. NOONAN. I think I would like, for the benefit of our hearing reporter, to take a 5-minute break, stretch and then come right back. I hate to break the dialog, but for the benefit of the reporter, I think we will do that.

We will take a 5-minute break, stretch and resume again at 3:10.

[Whereupon, there was a recess.]

Mr. NOONAN. I would now like to encourage some dialog between the respondents and the panelists. Before doing so, I have a question of Mike Harvey and Dick Stroup. Do we agree with what the Secretary of the Interior said this morning in his remarks, and let me repeat it, that all public lands which contain environmental and/or economic assets of natural significance will remain in Federal ownership and be managed to provide the greatest public benefits? Do we agree upon that as a policy statement.

Does FLPMA in the RPA program provide sufficient guidelines and procedures for evaluating those lands to be retained and those lands to be disposed of? Mike.

Mr. HARVEY. It is not nice to answer the first question. If I just said yes, would you let me stop? I think the answer is yes. That is the thrust of what I was trying to say. FLPMA, for example, says public lands should be retained in Federal ownership unless, as a result of the land use planning process set up, the disposal of a particular parcel will serve the national interest.

I must say FLPMA allows, and so does the National Forest Management Act as an amendment of RPA a fairly broad stretching to any given Secretary to determine what is the national interest. By its very nature multiple use has been described as a collection of conflicting generalities, allowing considerable discretion to the administrator. One person whose national interest and attention for a particular tract, I think, could come out and be legal as a national interest in disposal under the FLPMA standards.

And I think it is important to recall also that you gage the reaction of those who live in public land areas and use them concerning what has been expressed today, that public lands might get sold out from under them, so to speak, and would not be able to compete with a rancher or what-have-you.

We have seen floated by Mr. Henke from the staff of the Council of the Economic Advisers and by Senator Laxalt some thoughts that perhaps you allow the ranchers to buy the land at $20 an acre or buy the grazing rights to continue then as if in private ownership.

It is not clear how that would work out, but I would say that FLPMA does expressly allow the Secretary by regulation to establish preferences among categories with respect to purchasers. If the Secretary wants to say these are lands out here and we will only sell them to those who have grazing permits on them now, I think he can do that under the law.

There is broad authority under the existing law. I would note that in Mr. Watt's statement this morning he indicated they probably would not sell more than, as I heard it, 35 million acres of Federal lands and he referred to 5 percent of 700 million.

The first cut was the formula he talked about. I think it is comparable to the five identified in the 1960's. But I am sure it is more than five. There is no doubt, for example, in my mind in the mid-1960's there were tracts that are not constrained in the growth of existing communities, for example, that could be used for intensive development that today are.

Look what has happened in the southwest demographic regions during that period of time. Land 20 miles outside of Phoenix is now butting up against one of the suburbs.

Mr. NOONAN. Dick, do you have any thought on that?

Dr. STROUP. Well, I am in the policy analysis business and not the policymaking business, as a policy officer of the Department of the Interior, but it seems like the Department can live with FLPMA. I am new on the job and I don't know of any proposed changes that are being asked for by the Department.

Mr. NOONAN. Is that true, Bruce? Are you aware of any changes in FLPMA being considered by the Department?

Mr. SELFON. I really cannot speak for what might be considered in the Department with the exception of a piece of legislation that the Secretary mentioned briefly this morning, which is just being talked about. That is some enhanced exchange authority, so perhaps we could talk about it in the panel tomorrow. I have seen nothing.

I would like to just emphasize that I in my job of identifying with the agencies the land to be disposed of and not constrained or attempting to find any particular amount of acreage that while I have heard this 35-million-acre number and recognize that it was used for construct purposes in the development of the President's budget, it is just not the way we are going about this process.

And just to emphasize what I started to say earlier, we are looking for lands which we agree are disposable under existing statutes and then once we agree upon the appropriate criteria, we will see which and how many lands fall into those categories and whatever acreages fall out is going to be the acreages that we are going to try to offer for sale.

And I think the information I have seen indicates we are talking about somewhere in the 3- to 4-million-acre category, which is the amount of land that has been immediately identifiable as available for sale under existing statute and that is what we are going to try to sell first.

Mr. **Noonan**. Bill, do you have any questions of the panelists?

Mr. **Reilly**. I have a question for Dr. Clawson. Looking at your prepared statement, Marion, by and large I agree there has been land management failure. I infer that you don't consider transfer on any large scale to the States a good idea and I then look at your discussion of the possibilities for disposing to individuals, corporations, and nonprofit organizations.

I wonder how the pullback proposal would work. First, it sounded to me as though you meant you would give some kind of residual interest to a party that, absent good management, they would be able to establish some right to. It seems like it is more complicated than that and I wonder if you would elaborate.

Dr. **Clawson**. You have asked four questions, I think. I may have been a little dramatic in my remark about the part of the State but not much. There is a long record of State administration of public lands and for the most part States have squandered their public lands.

The States are just as bad as everyone else. It is not just the Federal Government. The pull-back idea, I think—I must say I published it—is the best connection with leases. You come in and apply for a tract of land to lease and I say why should you get such a big hunk of land as that. And I am going to pull back some of it. I would have to use the same terms of the lease administered.

Mr. **Reilly**. You would be a third party?

Dr. **Clawson**. Yes.

Mr. **Reilly**. Intervening in a proposal to transfer a lease hold to me.

Dr. **Clawson**. And I would argue that pull-back leasing would have to be available to me or to anybody else without your consent or without the consent of the Federal agency.

Mr. **Reilly**. Irrespective of whether I was doing a good job of managing——

Dr. **Clawson**. This would be at the beginning when you first applied for the lease. I had not thought of it as intervening. This would be one means, for instance, if a timber company applied for a long-term lease on a tract of timber and a conservation group said we really want a piece of that for conservation purposes.

You come in and take a piece of it, I would say up to a third, and there is nothing magical about a third, up to a significant part, but not enough to jeopardize the whole thing and you meet the terms of the original applicant. Now, if you applied and Pat and I both wanted to pull back, we might have to go into a process between the two of us.

I suggest all of this because I think it would apply a checkpoint in the leasing to the extent the land management of the lessees and it would also provide a very effective means of testing the value of this land for different purposes.

It would provide a very effective means for minority groups, local interest groups, and I have developed some specific numbers to put in, whereby a local community might very well take on various size chunks of land under terms that would be attractive to them for some purposes.

For instance, I would be restricting the leasing of timberland for timber harvest to the most productive timberlands. The lands that were not going to be harvested, I would lease out on a very modest fee schedule, very modest indeed, but subject to low timber sale. And then I would go, I think, as I say with very modest terms, to any group whatsoever that was interested.

And I think we could capture some of the things that Rick Stroup and others talked about in the competitive market bidding against one another. The bidding would be between the individuals, rather than each of them rushing into a Federal agency trying to sway it to their wishes.

That is a new idea. I am sure there will be a lot of discussion before it goes any place and there should be. Whether it could also be applied to sales or not is another story. Perhaps it could. You could come in with an application to buy and I would say, I'll be darned if I am going to let Reilly get all of that land. I want to buy it. I have a right to refusal.

As I say, I can see some problems, but I think one ought to be willing to think, as I wound up my discussion, ought to be willing to thing innovatively and we ought not to be too constrained by the governmental processes that have evolved each year. There is a lot of strength and good things about them, but let us not assume that time has to stop now.

Mr. NOONAN. Marion, I have been handed a little note that says your proposal on lease pull-back is explained in detail in your forthcoming book. Is this note from you, Marion?

Dr. CLAWSON. The trouble is the book is not forthcoming as quickly as I had thought it might be. I do have an extended manual and it will be forthcoming sooner than the book.

Resources for the future is planning a conference on Federal lands in September and I hasten to say it is an invitational matter and in the circumstances under which it is being held we cannot accommodate large numbers of people. But I am preparing a paper for that in which I will explore all of it, including the pull-back, the long-term leasing and the pull-back in much more detail.

At least I think I will. I have not written it yet.

Mr. NOONAN. By September it will be available, hopefully.

Dr. CLAWSON. I think so.

Mr. NOONAN. Bill, do you have another question?

Mr. REILLY. I have a more philosophical question for you, Marion, sub.iect to this public lands ownership. By whom and for what, and I think you have a longer memory and a broader perspective on this than anybody else here, I wonder, as a former BLM administrator and a long-term student of the Federal land policy, how do you feel about current privatization and assets management? Are you sympathetic toward those moves?

Dr. CLAWSON. Approximately 25 years ago, in resources, we said that the issue of disposition of Federal lands had been settled effectively, that there would be some minor disposal and some minor acquisition, but the Nation had arrived at the consensus that what we had, we were going to keep and we were not going to expand it.

Now, mind you that was at a time when 20 years before that, for instance, the Forest Service in its report had talked about increasing the Federal holding by 2 million acres. Now, that never went through, it never got very far. It was at a time when there had been a lot of talk about the wholesale disposition of the private.

We were supposed to say that the issue has been settled, and I would like to point out that the Public Land Law Review Commission 6 years later said the same thing we said, and I suppose not coincidentally. But I have had some second thoughts.

I think the issue is not as completely settled as I thought it was 25 years ago. And that is really what I am saying here today. Let us reexamine some of this. Let us consider alternative proposals. I don't see that the Federal Government is ever going to get out of the land ownership business.

I cannot conceive of that. But we must reduce it. We might shift some of the management. We might give it to some private owners. Let me say that I sat here this morning and listened to the Secretary with some interest. Thirty years ago we were talking about disposing of scattered tracts and we were talking about 3 to 5 million acres.

We did a little bit. We talked about exchanges. We did a very little bit. Some of the questions I would like to suggest to some of the people involved here, are why did we not accomplish more. Now, admittedly, the new generation is smarter than we were and all of the rest of it, but why did not we and the intervening people accomplish more?

One of the answers is that it is a rougher deal than it sometimes is thought to be.

Mr. REILLY. Thank you.

Mr. NOONAN. Do any of the respondents have any questions or comments of the panelists? Dr. Barber?

Dr. BARBER. I hate to keep Marion on the floor, but I would like for him to get into a little bit of the idea of leasing, as to whether or not, or if so, how we would integrate leasing with the present land management planning system. That is in terms of what sort of constraints we might place on the lessee to stay within the overall production of a unit.

Dr. CLAWSON. I would like to try and set the terms of leases such that leaseholders, private interest groups would determine the terms of it. I don't know if that is possible or not. One of the attractions of leasing, if you will idealize the thing and assume it will work perfectly, is that it would take some of the lands out from under day-to-day administration of the Federal agencies.

For instance, if you leased fairly productive timber land in very large blocks to timber companies, making them pay initially for all of the standard commercial timber on the ground and agree to pay them at the end of the leasehold for any standing timber that is left, we could pay them for the lease. Then they could presumably manage it in two or three of that period of 20 years, 50 years, or 100 years. They could manage it for a maximization of timber values from that land, in terms of management, harvest, harvest management, growing, and all of the rest of it.

Now, how far would you restrict them beyond what you restrict them on private land today? Because after all there are restrictions now, a lot of environmental restrictions on private lands, I would be willing to lease some of it, Derrick, to some of your clients for corporation purposes and assume that they would manage it as much in the interest of their members, at least, as if it were the public owner.

And, again, the fact that leases would be available, widely available, and again the pull-back provision so that I think one could get by pretty satisfactorily with a very minimum number of restrictions on use.

Now, I am thinking out loud and I hope it will stimulate you to think out loud.

Mr. NOONAN. Derrick, do you have a comment?

Mr. CRANDALL. I have a question. One of the driving forces behind the purposes of these seminars last year was looking at less than fee simple acquisition for parks and other parts of the Federal estate. Have we turned the image around? Are we looking at, can we sell, for example, less than fee simple from the lands that are now being looked at for privatization?

Has that been fully explored by the Property Management Board and by the Congress? Mike Harvey, and anybody else, would you care to comment on that?

Mr. NOONAN. Bruce, would you have a comment on that?

Mr. SELFON. Thank you. We certainly have not foreclosed those kinds of possibilities. My understanding is that given the very strict criteria which is being developed for the lands that are immediately for sale, that is lands that don't have mineral reserves, that don't have critical environmental concerns, that are not part of any of the designated areas that we all want to protect, to keep in public ownership, that there is little likelihood that there would be significant restrictions from the Federal point of view, that we might see imposed on property.

I do believe that there is a large amount of local flexibility in terms of the zoning, for example, that might impact on our ability to sell the property at what might be the highest and best use. It is all too often said that highest and best use is high-rise apartment buildings. I would not endorse that view, but people seem to feel that sometimes.

I do think that we do need to recognize the significant impact on our program of the local jurisdictions and picking up on the point that Tim Schultz made. It seems to me that while local participation here in Washington in terms of organized groups is helpful——

Mr. NOONAN. Bruce, would you talk in the microphone please.

Mr. SELFON. That while having organized participation by local governments here to us in Washington is always helpful, I do think that the cutting edge in the decisionmaking role of the local government will come in the zoning process as we seek to have these properties disposed from the Federal domain.

I think that is appropriate. I think that is the closest to the people. I do think that the local zoning group will then look at the property which we intend to make available and decide should this be a problem. Should this be residential? Should it be commercial and that the local communities will have the opportunity to make their views known through the will of the local government and that will go ahead and dictate what happens.

I think we can improve the overall Federal management of our land, if we make a decision that it should not be in Federal ownership, and then progress to the decision as how best it could be handled outside of Federal ownership, whether it be State controlled or it is in private hands, or handled through the community. That is a process that is down the road yet and one we are just beginning to approach.

But our general approach is not to prejudge that local decisionmaking and we look forward to seeing it develop. That is a little off the point of your comment, but I did want to address that with respect to what Tim said during his earlier presentation. Thank you.

Mr. NOONAN. Derrick.

Mr. CRANDALL. I just want to make the following point, Ed Harper made a comment to me last Tuesday, that he did not think that much of the property that was going to be reviewed by the Property Review Board would be of significance to recreation.

I would simply say that I think it would be a tragedy if, in fact, we simply discussed them and those types of lands that are going to be reviewed by the board. For example, the recreation community does hold that there is a review of the total public land policy so that, in fact, the lands that are attractive to the pirvate recreation industry can be looked at and the constraints on the current access to investment and management of those lands are overcome.

And with that, I guess, I come back to the basic point I was addressing in terms of less than fee simple sale or perhaps less than complete leasing. We believe that many recreational kinds of industries are compatible with other kinds of uses of the public lands, whether it be for timber production, mineral production or various other things, they are compatible with uses in a particular area.

There is something to be said about looking very carefully at the public land holdings and to disaggregate the total use of that into particular, actionable chunks. Thus, a ski area or marina developer or someone else may be able to invest if they have a long-term easement or lease or, perhaps, even a long-term ownership where the rest of the rights of that land are transferred.

Mr. NOONAN. Derrick, I would think your industry would even be interested in relatively short-term leases, 15 or 20 years, where you can again reduce up-front captial and with nice appreciation allowances 15 years would be to your advantage. Am I wrong?

Mr. CRANDALL. Fifteen or twenty years would be long based upon current Federal land management policy. With the exception of ski areas very few other private and recreation industries have had the ability to persuade the National Forest Service or the National

Park Service to look at more than perhaps a 2- or 5-year lease or permit.

Mr. **Noonan**. Which does not justify major capital investment.

Mr. **Crandall**. Exactly.

Mr. **Noonan**. Because of depreciation and the writeoff return. So a longer term would be advantageous. Dick.

Dr. **Stroup**. If we look at large private land holdings and even some small ones, there are quite a few instances where recreation has shown to be very compatible with other uses. Some work at Texas A&M has shown recently that in large parts of west Texas, ranches earn more from recreational fees on their lands from hunting than they do from all of the traditional agricultural revenue.

I am told if we look at International Paper Co. today in the United States their most profitable division is the recreational division. They have several wildlife biologists, I am told, on their staff to help them increase the value of their land in that respect. That is not what they were accounted for, I am sure, but there is an increase in demand for those kinds of services that has caused them; even if they did not care about recreation, it is worth their while to act like they did care.

I think that is a very important element about private ownership. That is, it is in the private owner's interest to seek out new ways to make various uses compatible, to reduce the old uses value as little as possible while making the new services.

Mr. **Schultz**. I would like to go a little further with the question and go to Dr. Stroup. Within your position in the Department of the Interior, realizing what Bruce has said about discount sales to communities, in reading your paper, I find more of an emphasis on the highest yield being the highest price that could be made available for that property.

It is my understanding of the law that the Secretary has the authority to continue discounted sales. We have heard, I believe, he intends to potentially do this, but, as the director of policy, would you be making recommendations to continue the discounted sale of property to local units of government, or are you going to move into an area of trying to get the highest yield possible for any properties that would be sold by discontinuing the discounting process?

Dr. **Stroup**. What we do as policy analysts is to make—and types of statements. If this happens, you can expect the following results. If you do a different thing you can expect these other kinds of results. We do not in my view make policy recommendations.

As an analyst, however, on a note that even if we look at the maximum dollar returns for land, that often includes the kinds of nonsalable values that people worry about losing with privatization.

For example, in the case of Big Sky—I just returned from Big Sky Development in Montana, a group of people, that I don't think were motivated particularly on behalf of mankind, I think they were chasing bucks mainly, they put together an entire valley in such a way that very little would happen within that valley that would affect parcels outside of the valley.

What they did then was to sell all kinds to littler people, but they sold to a very strict structure. For example, I am told by the lawyers who wrote the covenants that if I buy a lot up there, if I even leave my building materials on the lot for more than, say, like 6 weeks, my neighbors could come in and confiscate those materials. A lot of things are prohibited to people who buy up there.

What is happening in effect is the increased value of the land due to those covenants accrues to people who drew up the covenants. They bought low value lands. They turned them into high value lands by restricting things. Everyone who buys up there knows that all of their neighbors are restricted, all voluntary restrictions, but the amenity values are recognizing capture. That is very new. It is a new demand over the last couple of decades which led to that kind of development.

Mr. **Resler**. I wanted to ask a question this morning and there was not ample opportunity. I am wondering if Bruce or Rich might shed some light on this question. When and in what form may we have some idea regarding which lands are to be sold, exchanged, or retained? What is the process in which the public can learn of those decisions and conclusions before they are implemented, before it is sold, in other words?

Mr. **Selfon**. Thank you. I think we can do easily much better than that. When the bell rang this morning, I was in the process, earlier this afternoon, I was in the process of reading through, from our subcategories list amongst the three big categories, selling, retaining, and studying the lands.

It is our intention that what we will do as the very next step is I hope very shortly, if not next week, to be able to announce, the Department of the Interior, one of us will announce these subcategorizations as our preliminary decisions as to the kinds of lands that will be in the three categories.

And I think we have at least hinted at them, and as I said, I was reading the list out to you. Basically, of course, that does not satisfy your response, which is what about the individual tracts of land and I would like to respond to that.

The decisions, as Mr. Harper said this morning, and this picks up a point that Mike mentioned, the decisions as to which individual tracts of land fall within the various categories are going to be left with the Bureau of Land Management and the Department of the Interior.

And it will be making its decisions fully consistent with its obligation for public participation in FLPMA. If you wanted to know what were the 3 million acres of land which have been identified or mentioned thus far, I don't know where they all are at all. But if you wanted to take the time to go back and look at the individual land-use plans that have been developed over the past several years by the Bureau of Land Management, they will reveal those parcels.

Now, I appreciate that for purposes of public policy debate asking you to go back and look at what must be hundreds and hundreds of land-use plans is not a particularly effective vehicle, but these lands are all right now a matter of public record. As we progress in this program, I think we have an obligation to bring those properties into some more usable form or inventory. I am confident that the Department of the Interior will be doing so.

But just let me repeat that not 1 square inch of property is being proposed for sale right now that already is not marked for sale or disposal from the Federal domain under existing land-use plans in FLPMA. And it is simply a function of our lack of staff time thus far that we have been able to devote to it, we have not been able to put it together in a big list.

Mr. **Reilly**. That answer would be more reassuring to a lot of us if we had not heard Ed Harper say how dollar figures were devised this morning to determine the total value of the land to be disposed of. There was obviously no consultation with the agencies in the development of those numbers. Rather, those numbers had been given to the agencies which are now, it seems to me, under a fairly strong incentive to go just about as far as they can in bending their authorizations to look for lands to meet the budget targets.

Mr. **Selfon**. Let me respond to say that you have exactly said what they are. Those were budget targets. They were intended to put momentum behind this program but I don't know what to do besides repeat myself and assure you that what we are doing is asking the agencies to come up with disposal criteria that are right now consistent with the existing statutes.

We have asked the agencies and this is the only responsible way I think to go, we have asked the agencies to provide us with various disposal scenarios in order to meet those budget targets as a vehicle to get a policy decision. I don't think that is any different from any management decision in the private sector where the head of the company says, tell me what I have to do to sell 10 million widgets; tell me what I would have to do to sell 5 million widgets.

And whether or not it is sensible to sell 5 million widgets or 10 million widgets, whether it is sensible to be able to make $2 billion in sales from public lands, which is what the President's budget calls for, is something that will be determined by the results of those studies by the agencies.

I can only say that I have been encouraged by the dollar amounts which are able right now to be attached to this land which has already been identified by the Department of the Interior. That land, as I indicated, is already marked for sale under existing statutory authority.

I have not mentioned the Department of Agriculture and the reason for that is that the lands are the Forest Service's and how we are going to handle them is still being developed. They are still in the very preliminary stages. And the Department of Agriculture will be making a presentation to the Board next month.

I can just tell you that I am anxious to reassure you and as soon as we have the preliminary subcategories analyzed we will make them available. I cannot imagine how this program could succeed without the total involvement and cooperation of both the Congress and the local communities and user groups. We intend to do that.

And that may be the source of my difficulties that Marion alluded to earlier when he talked about whether we would be able to accomplish this. We are proceeding one small step at a time down that path.

Mr. **Noonan**. Any other questions by the respondents? Mike.

Mr. **Harvey**. I just want to make one comment. I think part of the problem that Bruce has in trying to explain his mission just does not come out of a clean slate, so to speak. People are looking at this from a background of the Sagebrush Rebellion, President Reagan's statement as a candidate about that and his statement as President about the efficiency and abilities of bureaucrats versus the private marketplace and other pronouncements from various White House staff members and so on, who seem to be advocating a philosophy of private is better than public and that philosophy could be correct.

But rather than an asset management concept that simply says we have got some things that we really do not need to have and it would be better in someone else's hands so let them do it. So there is that kind of uncertainty in the public's mind. That is part of the problem you are having.

Mr. **Selfon**. If I could respond just briefly to that. When we publish our categories, our subcategories you will find in the study category the controversial issues that we are most discussing today. I don't mean the wilderness areas, the wildlife refuges, et cetera. Those are not controversial from our point of view. Those are not going to be sold.

But I am talking about lands, the subsurface estates where there is non-Federal ownership, perhaps, the question of lands that are currently under grazing permits, those issues are in the further study category, because I think that accurately reflects the maturity of the debate on those subjects.

I don't think that we can sense that there is a consensus to sell those properties, or a consensus to retain them, or a consensus to continue even the existing policies with respect to those properties. And I would hope that the Property Review Board and the President's commitment to looking at Federal properties could be used as a vehicle to improve the overall management of our Federal lands.

And I believe that with the kind of effort and interest expressed here we have a real shot at doing that. And all I can promise is that to the extent people make their views known they will be reviewed by the President's most senior advisers and, in response to a point you made earlier, Mike, we will put behind it the resources necessary to carry out this program. It is a program that is of great importance to the administration.

Thank you.

Dr. **Stroup**. I just want to briefly address what I think is a misunderstanding with respect to the future orientation; that is the notion that the next generation is going to have a real problem if we have privization of some lands. I would like to tell you the hypothetical story of the crotchety old rancher out in Montana who owns a big place and he has no heirs and cares for nothing about anything but himself and he finds he has got 2 years to live.

What he is really interested in is living it up in 2 years. The doctor tells him he is only going to live that long and he believes that and all he is going to do is live it up for 2 years. There are a couple of ways of doing it in regard to his ranch.

One way would be to overgraze his land, run it down and increase revenues in the near term at the expense of the long term when he will be long dead. Why would he not do this?

The reason he will not do that is the land will suddenly become less valuable to him as a short-sighted person than to someone who sees current revenues plus future revenues. The way this old fellow is going to finance his 2-year plan, the way he is going to do that is to sell to someone for whom the land is worth more, that is someone who can capture those future benefits.

The future buyer is in effect in the market now through the middleman, just as you and I in Washington are in the California orange market through middlemen. The California orange farmer may not care about you and me, but he is willing to sell to the middleman, who sells to the middle, who sells to the middleman, who sells to us.

Similarly, a speculator or a user who keeps things up is someone who can buy now and sell later. That is part of what Marion is talking about in this long-term lease with a buyback of standing timber remaining. If the seller knows that the value of the asset declines if abused, he will want to abuse it only if there is greater benefit than future loss. Even if he does not care about the future, the asset value today is important.

Mr. NOONAN. Any other comments? George, do you or Jeff have any?

Mr. REILLY. I would make one. I think your paper is very relevant, Dick, and I sympathize with you on the private market, the things that you express. But I am struck by the reports of the 1905 White House Conference out of which so much has flown. I think of my own background as a conservationist and I wonder where I was and how I was represented by those middlemen when the lands nobody wanted, the Eastern national forest, were cut over causing the calamitous dilemma throughout the East, throughout the Appalachian, necessitating public purchase, public restoration, establishment of the whole Eastern national forest system.

And I think today that the problems that the Conservation Foundation is working on, the exacerbation is eroding, and I wonder whether the middlemen are dealing responsibly for future generations in tolerating the unsustainable, the very high rate of soil erosion off of American farms. In short, how could you argue in those practical and specific instances that the private market is taking seriously the longer term future of resources?

Dr. STROUP. First of all, let us admit there is no perfect system in the States. And that is No. 1. Last year the University of Michigan Press published a book edited by me and John Baden entitled, "Bureaucracy Versus Environment." We documented, I say we, really it was mainly physical scientists and policy analysts and organizations like the Wilderness Society, and people not typically thought of.

Those people documented 10-million-acre case after 10-million-acre case where public lands have in fact historically been greatly abused at great out-of-pocket expense. But the point in studies like that does not show that the system should be replaced either on the private side or on the public side.

Mistakes are going to be made, no matter what the system. Notice, however, the private side in terms of own wealth and I can remember a conversation with a former forest product industry official, working for a firm that had in fact abused the forest land, had in fact allowed erosion, and had in fact, messed up.

He happened to be the guy who remembered it well, because he was the guy in charge of disposing of that land. And, boy, did they take a beating on that land. He said that for just a few thousand dollars more care during logging, they could have been many hundreds of thousands of dollars better off during the sale.

Well, mistakes are made, but I bet they don't do it again, not that firm. But mistakes are made in both sectors. Which sector learns faster? How long does it take? I hasten to add I do not blame the individual official involved. I have argued for years, and especially now that I am a new bureaucrat, that it is not the bureaucrat's fault.

They are simply responding to the information, the incentives and the political pressures they feel. They are just as smart and just as well intended as anyone in the private sector. Also, don't forget prices change with time. The right thing to do changes with time and it changes with status. A uniform nationwide policy for managing any resource probably does not make sense except at the grossest level. That is the most genuine.

Specific policies make good sense in one place and not good sense in another place. Specific policies make excellent sense in one era and terrible sense in another era. I refer back to the use of wood during England colonial times and during American colonial times, vastly different. Both made a great deal of sense in those different places.

I think the answer is that the private sector management is not perfect, but I think the future is looked after. By contrast, mind you, future voters can never vote now. Therefore, there is a real problem there.

Mr. NOONAN. Let me make a comment. In my own experience in resource management, when I was president of the Nature Conservancy, we looked upon our natural areas, on 700 of them, as both resources as well as financial assets. One of the problems we are faced with is terminology that fails to recognize that these areas possess both their natural resource value and economic value.

The same holds true for disposition when we are looking at that asset base or resource base and many conservationists are concerned that we look at it first and foremost in terms of resources. Which ones are important for the national interest and, secondarily, which ones provide the greatest income? This dialog today brings us closer to an understanding that it is fundamental that resource management is what we are talking about when managing our public lands.

The public lands have economic benefits, but they also have social benefits and a variety of things that all must be taken into consideration rather than relying solely on targeted numbers of objectives in deciding upon disposition.

Dr. STROUP. On the economic side of the value of the land in the market, and the value of the resource for, say, human enjoyment and future generations and so forth, those two are not connected. If you look at how conservation and mining organizations manage their own land, I think you will find it a very efficient kind of management.

I have written in the past, and I am sure the Audubon people do not like me for it, because it has been misquoted so many times, but in the Raney preserve the Audubon Society has, they have 250,000 acres in which they look at both revenue and resource management, even though I would maintain they do not care much about money. I don't think that the Audubon Society cares that much about money.

I think they care about the resources that they want to protect. But notice that when Mobil Oil came in and asked them for rights to drill, they listened and once Mobil was able to make the right kind of adjustments and the kind of drilling they wanted to do down there in that 30,000-acre preserve in Louisiana, once Mobil made the right kind of adjustment to those drilling procedures, Audubon allowed them to go ahead.

That was not a sellout in any fashion by the Audubon Society. What the Audubon Society was doing was trading off some benefits in development for nearly $1 million a year in revenue. I do not think they cared much about the $1 million a year in revenue per se, but they sure cared about what that could provide them in fulfilling their mission.

Even if they cared not a whit about oil and gas production, they would have to act as if they did, because they owned the land and they were able to make the tradeoff and buy other lands and manage the rest of that land better and educate some congressional Members, I suspect.

They did not sell out their mission. By paying attention to the market they furthered their mission. I notice also that they were perfectly willing—there was no sense in screaming across the table at one another, the developer and the environmentalist, were not screaming across the table at each other in that setting, even though they may have the next day at some congressional hearing or public forum.

And both the screaming and the talk made sense, because in the public setting, trying to influence public lands, the emotional arguments are very important. You want to make the other side look like a fool. But if you are limited in trying to buy from developers or if you are a developer trying to buy from the Audubon Society the right to develop, you want to make sense.

If you are the owner on either side, you want to look at what can I get out of this that will help me with my goal, what can I give them at least cost to my goal and still get something to further my goal. Both sides are going to look at it that way, no matter which side owns it. Both sides are going to scream at one another in dealing with public lands.

Mr. NOONAN. We will turn to the audience. You have been very attentive and very patient, and we will open up to questions. Please identify yourself.

Mr. KUSLER. John Kusler. Following the point made by Mr. Schultz here, when public lands are sold to the private sector, it is the community often that has to bear the cost of services. As the Federal Government is cutting back the subsidy of sewers and water and roads and so forth, what mechanisms very specifically are in place to gain input from the local communities when these anticipated sales take place?

Do you have some very specific procedures right now where the communities can comment and some of their thoughts can be taken into account? I don't know who it would be to answer that, but it seems to me there is an important point.

Mr. SELFON. Do you want me or Mr. Schultz?

Mr. KUSLER. I think I am kind of raising his concern and I would like to know if this administration is responding to that particular concern.

Mr. SELFON. I wish the administration could respond as easily as the microphone was moved. I think the best way to respond is to recall that lands that are presently in Federal ownership are not part of the local tax base to the local community. There are payments and in lieu taxes made for certain kinds of Federal properties. They tend to be considerably less than the revenues, which we understand that State and local communities would be able to realize from potential development to the properties.

And if the situation were to arise that we were going to make these properties available and then the local zoning authorities determined that the appropriate way to have the property developed was, in fact, for residential and that would then mean a commitment on the part of the community to provide local services to that community in forms of police protection and hospitals and roads, et cetera, educational needs and things like that, I think that is exactly the kind of issue that must confront the local zoning authorities. If the local zoning authorities think commercial development is the best use of the property, then I would like to think that that is a vote on behalf of the local community to assure that the infrastructure is put there and that the local tax base would be greatly enough increased, either in terms which would come to the communities to develop the properties, in terms of productivity, if the property were going to be developed for commercial, additional demands on services in the community, plus the property taxes that would come from the development of the property to defray that.

If not, it is not going to be cost effective for that property to be developed. But I don't think that you would really want the Federal Government to sit back here in Washington and try to prejudge these kinds of very complicated, detailed decisions that should be made on an individual basis by the local community.

So, we are not making any special provision for them in our program. What we are doing is, we are allowing the State and local governments to use the existing statutory regulatory mechanisms to make those kinds of decisions.

I don't disagree with you at all. It is quite significant and we will see in individual cases how that comes out. Mr. Schultz may want to mention the fact that he is from the city of Ranger, Colo. Under a recent transfer from the Federal Government 106 acres were transferred to that community.

The fair market value of that is $520,000. It is community expansion, I think. That property was paid for by the community of Ranger in the full amount of $520,000, exactly according to the requirements of FLPMA. So, that was at least an example where the community felt it was worthwhile to pay for the land for future benefits.

I am quite confident that there will be many more examples like that around the country.

Mr. SCHULTZ. I would like to comment on that. Using the Ranger example of the existing FLPMA, that application has been before the Department for 2 or 3 years for potential growth by the city of Ranger, so they had adequate time to plan. They had their zoning in place.

I think my concern and my recommendation to the administration would be that there should be special provisions within your organization that would allow for early notification of local governments. If we are put in a position of the Federal Government deciding to sell a tract of property and then told that this is a piece of property that is going to be sold and we look at our master plan and we have projected growth in one area of our country and agriculture in another area or something, if we are to attempt to rezone that after a Federal decision is made, we become very liable to a lawsuit from a potential developer that our decision was made not based on a countywide plan or long thought out countywide goals, but based simply upon a knee-jerk reaction to something that we as elected officials don't feel is maybe in the best interest of the community.

What we need is early involvement so that those counties, and I am confident that most of the counties in the country have good land use plans, and that is our responsibility to have those. We accept that responsibility. But what we want in return is that if we develop Federal initiatives to sell property that our land use plans are taken into consideration from the start so we are not put in a position of controversy.

We are not put in a position potentially where—I talked to the mayor of the city of Honolulu, where they are telling me that they are going to rezone into an open space the entire beach front of where the hotel that Senator Percy's hearings continually talked about selling, the military hotel. Now, it may have been much better to go to the city early on and say this is potentially a surplus property; is there a way we can work out the sale of this property to maximize Federal revenues, but still accomplish the goals of the local people to have some open beach front property.

I think that is our concern and the issues we want to raise. We would like to see some special consideration given early on so that we are not having to react to what we perceive as a mandate coming out of Washington saying we are selling this property in your area. We are then forced to try to adapt to that, potentially at a large cost to provide services in an area that we had not planned on for growth.

Mr. SELFON. As I indicated, I think if we had that situation it would be a terrible mistake. All of the properties we are talking about selling have already been identified in land use plans, which I am presuming, in accordance with the FLPMA regulations of the Department of the Interior, must be consistent with the county master plans.

As we go ahead and progress to identify additional properties, I think we have to maintain that ability to first consider the local master plans and the land use plans and I expect if we don't do that we will not be able to get the best possible use out of the property.

Mr. NOONAN. Additional questions?

Mr. IRLAND. Lloyd Irland, from Maine. The Secretary this morning said that he does not quite trust the Land Management Agency to make a recommendation about disposal, since he pointed out they tend to be rather possessive of a lot of those. In the presence of so many people who believe in incentives and markets, those people suggested to him that those agencies be allowed to keep 15 percent off the top of the land sale proceeds for the land acquisition budgets. Why not apply an incentive like that?

That might be a constructive way to deal with the land acquisition backlogs and it would also be an incentive that I would expect our free marketeers here to think positively about. Is there any response to that?

Mr. NOONAN. Bruce, do you have any thoughts?

Mr. SELFON. It is a suggestion that has been made quite seriously by the Department of Defense with respect to their properties. Only 15 percent was not the number they suggested. [Laughter.]

I really think that you run a risk when you get into any particular number of deciding whether the incentive is so great that they ignore the other public purposes that have to be served and just try to make a buck.

I do think that we have gotten started within the Department of the Interior a real effort to take a good look at what lands are actually being used and how they are being used and by focusing the policymaking decisions down to the local level to try to resolve the problem.

I really think that until we get in the results of all of the inventories that have to be made, we will not know the answer to the question as to whether or not there is enough land that has been identified. But I would suggest that they have begun it so sensibly at the Department of Interior. Because what they have asked in the first instance is to identify all land, I think it is within 10 or 15 miles of a population center of 25,000 people at the beginning of looking at how the land is utilized.

That is a good way to begin to identify small and isolated tracts that may have high potential value. I hope that as additional research becomes available, we will begin to identify land that is farther out, closer to smaller communities, and in that way we will avoid the problem of getting into noneconomical tracts to sell, but instead concentrate on the tracts of commercial development.

I have said before that my ideal piece of public land to sell is a vacant lot right next to McDonalds that we could sell to Wendy's. And I think there are a lot of those out there and I think we should try to find them.

Mr. NOONAN. Bruce, I would expect that unless some kind of a percentage incentive is given or some arrangement is made you may find the same kind of process that Marion was talking about when, years ago we started this process of exchanges and very few came to fruition.

I think in order to expedite the process and, moreover, to ensure it is done in accordance with FLPMA, an open process, environmental assessments, statements, et cetera, you are going to need additional resources when you are talking about disposal of the magnitude you are talking about.

Any thing else, I believe, is foolhearty in terms of the challenge you have before you.

Mr. SELFON. One of the things we are doing with respect to the GSA properties where we have current statutory authority is planning to utilize the private sector, the existing real estate firms to broker these properties. When you pay someone a commission, there is no question about their incentive.

Whether a similar kind of structure is appropriate for the Federal Government is more difficult and I am not sure under the FLPMA statute, the sales statute, with talk about competitive bidding procedures, et cetera, if that is entirely compatible with the use of the private sector.

But I take the point and we are far from a sales program as that with respect to the public lands. That is not coming until fiscal year 1984 and the reason for that delay is to allow us to take a look at some of these kinds of questions.

Mr. NOONAN. Mike, when you do the planning program, those plans and assessments and statements take time and they take energy and they take funds to do it. I think you would expedite the program as well as achieve the objectives of FLPMA to the extent you had additional resources and some type of a percentage incentive to be put back into a resource management program, unless you go for additional appropriations.

Mr. SELFON. Just to be complete, each of the agencies when we have asked them to examine their asset management plans has been asked to come up with staffing plans in order to implement them—once we agree on the scope of the program that we think is appropriate.

As I said earlier, this is an important program for the President and adequate resources will be made available to the agencies to carry it out effectively.

Mr. HARVEY. Pat, may I make a couple of comments here?

Mr. NOONAN. Please.

Mr. HARVEY. First of all, I think there is something to this idea about the incentives. I don't think it is going to be easy to persuade the Congress to give up the authority to appropriate money for programs and simply let it flow back to the program. That is one of the problems.

Earlier this year in connection with another matter, fee collection at parks, Secretary Vaughan indicated, as I recall, there was internally some guidance being given to performance ratings for park superintendents, for example, considering an A factor for their increase in revenue collections.

It is certainly possible under the existing service system to tell people that any program, in this case, asset management, is an important goal of the President, the Secretary, and the country. Those who do things that further that program more than other folks can get a superior performance rating, they can get cash awards, they can get merit increases. I think they still can. I have lost track of the Civil Service. Since we reformed the Civil Service in 1978, I don't understand it anymore.

In any event, those are things that can be done. Going to Bruce's comment about consistency, that is in FLPMA, and I don't know if Mr. Schultz touched on this, I don't recall that he did, but I know that I am getting a lot of mail from western Governors and western counties and that there is concern about the proposed change in the Department of the Interior's regulations that reduces the consistency requirement.

They say that what has happened here is the protection under FLPMA is being erroded away by the change in the regulations. They may not be right, but I know they are equally concerned about that.

I think while I have got the microphone, I will throw in a couple of other comments. One is the exchange problem that Secretary Watt alluded to. He is absolutely correct. The law says that exchanges have to be within the same State. That was done with malice of forethought by the Congress in 1976, because of just decades of political problems that arose with interstate exchanges.

The old Taylor Grazing Act allowed those to a limited extent and everyone of those tried, you know what hit the fan, just here and everywhere. State and local officials particularly are concerned about the loss of tax base in their State without anything being replaced.

There are a few laws on the books that allow interstate exchange specifically for park acquisitions and only a few of those ever worked.

Finally, Marion, I have not had a chance to talk with him about this, but one of the things that bothers me a little about this pullback concept, as I understand it, is a situation where they identify a long-term area, a lease for long-term intensive timberland management. And the Sierra Club thinks it ought to be a wilderness and not cut it at all.

If they can raise the money apparently, I am not sure quite how much, they can make the decision that land should not be harvested for timber when indeed, the owner of the property is the Federal Government and on behalf of all of the citizens has decided that it ought to be harvested. That bothers me a little bit.

We are allowing, in effect, the private individuals to make that decision.

Mr. NOONAN. Thank you. Additional questions?

Mr. OBNIBENE. Peter Obnibene, Western Report. A question for Mr. Selfon and anyone else who might like to address it. I am curious about what sort of accelerated procedures you are looking forward to. You have talked mostly about the land use plan that existed, but most of those worked fairly slowly under FLPMA. I doubt that one of the things the administration wants to do is have more accelerated sort of procedures. Just to give you an idea of magnitude, in Utah in 1980 the lands exchanged under FLPMA came out to roughly 2,000 acres.

The size of the land they would like to consolidate, the four sections for townships could total up to 6 million acres. So we are talking about fairly large magnitudes and I am not clear how you would get to these sorts of magnitudes without somehow either new legislation, something that would be more accelerated and would you, in fact, have the time to have the elaborate land use planning process that you have now and still be able to conduct sales of a higher magnitude?

Mr. SELFON. I am told that, as I have mentioned before, that nearly 3 million acres has already been screened through the FLPMA land use local community master plan for disposal. And I really think that the accelerated procedures that we are going to need to figure out how to get that land out of Federal ownership and into the market, whether it becomes necessary down the road to accelerate the development of the land use plan so we have another 3 million acres in the next year and 3 million after that, I think is something we are not ready to address.

I am concerned that we do not have in place adequate resources to handle the appraisals, the title searches and all of the associated rigamarole that goes to selling a piece of property. And we are in the process of working out how to go about doing that with the Department of the Interior.

But I don't see that those would require at this point legislative changes. I think if we can sell 3 million acres of unneeded land off that has been accumulating since at least Marion's time, we are off to a good start and we will try to see if we can work out a system with OMB, perhaps, where some of the proceeds of that can be plowed back in to pay for additional staffing and salaries for the employees.

It is not our intention that every BLM land manager or Forest Service forester stops managing its property and goes out and sells land. I am conscious of that danger and we want to make sure the resources are available without jeopardizing the rest of the program for the agencies.

Mr. NOONAN. Barry Tindall.

Mr. TINDALL. I am Barry Tindall, National Recreation and Park Association. Bruce, there are a couple of questions and maybe others might want to respond. I heard Secretary Watt this morning ask for help in the development of criteria. I assume he was talking in behalf of the Department of the Interior and not the Federal Property Review Board.

The April 6 memorandum that went from the Property Review Board to GSA identified correctional facilities and certain other properties that could be transferred without cost. It used the term "exceptional" to define other properties that could be considered for public purposes, including parks and recreation.

The question is, What kind of work is being done in further definition of the term exceptional, and my second question is what is the status of—the Property Review Board met on the 21st and it dealt with good neighbor activities and not necessarily GSA-type property, what is the status today of the GSA surplus property program as it relates to State and local government conveyances for the public benefit; including parks and recreation benefits?

Mr. SELFON. I would love to let somebody else answer that, but it would be unfair, since I wrote that provision that you are referring to. First, let me make sure for the benefit of the audience we are not talking about the public lands in Barry's question. We are talking about real property owned by the Federal agencies that have been acquired over the years.

We decided that it was appropriate to enumerate right at the beginning certain criteria for exceptions to our policy that basically properties in the future would be sold off or disposed of at fair market value. Those three exceptions were, in fact, correctional facilities, also applications or requests to the Federal Government for discount conveyances that were received prior to March 1 when the executive order was published in the Federal Register in which case we felt it was just not fair to the local communities to change the rules while the game was being played and force them to pay for property.

And then the third category of exception is cases of, as I put it, of exceptional merit, where the proposed use of the property was intended to be also its highest and best. And, frankly, that was intended by me to be an opportunity to continue to provide park and recreational facilities in the future.

It was intended because what we are really saying is that the highest and best use of every piece of property is not, as I mentioned earlier, a high-rise apartment dwelling. And should a community come forward and request from us a piece of property where the best use of the property is also a recreational facility, then we should take that into account, as we set the price for that property.

And while we might ask them to pay fair market price for it, it would be fair market value for use as park land, or use as open space, or use as a green space for the community, and not, assuming that it be built into high-rises.

Now, the second part of the question, which is how we are flushing out these theories, frankly, the only way we know to do so is through a case-by-case method. We are at the beginning of our program. The whole essence of the Property Review Board with respect to the public lands, as well as with respect to the GSA properties is to push the decisionmaking on individual parcels to the expert agencies.

And so the General Services Administration has been reviewing its pending cases in discount conveyances in light of these guidelines and they are going to make a report on these properties to the board. I understand there are some 78 of them that are pending, and I have not seen any of them yet, but when they come to the board, we will look at them. We will, to the best of our ability, handle them with care and with consistency and we expect that a fair percentage of them will be granted because of the fact that they will come under the second exception, that is the prior promises, which we feel we must keep.

And we will also take a look at those cases which are of exceptional merit. So I truly meant when I wrote that exceptional in the sense of an exception to our policy and merit, meaning something that is supported by the community.

And I really think that rather than try to spell it out in 10 pages, we are just going to be working with the communities, and working with the General Services Administration, and the interested members of Congress as we go about the process. But I just have not gotten any of these cases yet, Barry, so I cannot give you any specific examples of properties that will fall in one way or the other.

Mr. **Noonan**. Let me ask you a specific question, Bruce. You said decentralize the decisions down to the land managing agency. Do you anticipate the exchanges will have to be approved by the Property Review Board?

Mr. **Selfon**. I heard the Secretary say that, this morning. I hope not. I really think that what we are trying to do is to set forth policy. I mean, after all look at the members of the board, Mr. Meese, Mr. Baker, Murray Weidenbaum, the Director of OMB, Mr. Harper, Judge Clark, I mean, these are policy advisers to the President.

I would hope that we could put before them clear enough policy guidance to the members of the executive branch Cabinet officers so that even though we ask them to tell us when they grant an exception, that it would be a truly unique individual piece of property that was so difficult for a decision that we would actually have to look at it.

The whole idea is to set out clear guidelines, and establish certain exceptions and then let the land agencies make a decision on it. I guess what I am hinting at is that to the extent that Gerald Carmen is the administrator of General Services, that we use the individual pending discounts on lands deserving to be conveyed at less than fair market value.

And I am expecting by and large the board to support that view by him. I similarly believe that to the extent that the Secretary of the Interior comes forward with a proposed exchange, that even if it were one that was not specifically enumerated as an exception to our policies that the board would listen sympathetically as well.

But only time will tell as to the amount of actual casework to be done by the board. I only have a staff of three or four people and I hope it will not get any larger than that. It was never the intention to make the board a bureaucracy. And one way to do that is not to give me any authority to hire people. And they have been wise enough to do that.

Mr. **Noonan**. Additional questions? Barry.

Mr. **Tindall**. Just a followup, if I might. Perhaps I did not hear correctly. I thought you said, Bruce, 78 or so pending properties would be pushed to the board for a decision, and then your response to Pat was that you would hope that the board would not get involved with case-by-case situations.

The gentleman from Colorado made a case for a more participatory relationship between the Federal Government and the State and local governments, and I have heard that theme come up several times during this event and in both past Senate hearings on pending resolutions. I remain concerned that agencies like the National Park Service that have been stripped of personnel in this area are sitting over there and have not seen a piece of property come across their desk for weeks. The review process is breaking down between Interior, GSA, and maybe other offices.

I have to express concern for that and ask you if you have similar concerns. If so, why not open the process up a little bit for a more general review prior to getting to the property-by-property debates, which have to be heated and adversarial types of debates.

Mr. **Selfon**. Let me repeat myself and make myself clear. I expect at the initial stage to get referrals of those cases from General Services Administration, because it is their first task at our guidance. Once we see how they are being handled, and I expect quickly, endorsed basically to the board, the decisions of the administrator, then I don't expect to see so many individual cases again.

What we have is a blip because of the moratoriums that have been imposed while we were formulating our policies. I don't think anyone who participates and works with the General Services Administration has found them not completely open. I can just assume from the volume of mail that I am getting about these cases that I have not even seen—and I get letters every day about properties that I have never heard of—that everyone is quite aware of the debate and they are trying to make get their points of view known.

So I really think that is what is happening and I am trying to suggest the same response with respect to exchanges. I just really think that we are going to have more casework than we would like to be getting and then I hope to get the process institutionalized in the agencies.

It is a question of balancing their expertise in our policy guidance and I think the process right now is open. It is open at the Agency. It is not our function to administer a bureaucracy at the White House to administer the program. I am trying to avoid that, but I am trying to also indicate that when you give us the opportunity I am certainly not shy. You all have been very patient in listening to me this afternoon telling you what we are trying to do.

Mr. NOONAN. For the record, Bruce, I would suppose you will have to decentralize this. In the last 10 years, Fish and Wildlife, Forest Service and BLM have completed 2,100-plus exchanges in 10 years. That is about one every working day. There is absolutely no way that process can be more centralized. There was a question in the corner.

Mr. IRLAND. Lloyd Irland, State economist. One problem that has been vexing State and Federal land management is a kind of quasi-privatization has already taken place in intensive areas along rivers and lakefronts, where summertime and ski chalets are standing on lands and lots leased from the Federal Government. I would expect that people hearing the Secretary this morning would say let me hear what you would like to buy, folks. You will get a lot of letters from these folks, at least I used to when I was in public land in Maine. A lot of people are eager to buy out the lot that their cottage stands on.

Have you in effect had these kind of inquiries and what will be your general response to this situation?

Mr. NOONAN. Are you addressing that question to Mr. Selfon?

Mr. SELFON. Why don't I go last and maybe then someone else will go first.

Mr. HARVEY. You have to sell the properties nearby first so you would not have cutoff access to the lakes and only after that can you sell off.

Mr. SELFON. I have not received any specific correspondence with respect to lakefront properties. I have a growing list of people who are anxious to purchase properties when we make our list available. It is my intention on or about June 24 to put out the first preliminary list of real properties, not public lands, but real properties. That will be generally available and widely distributed.

I am quite sure once I put out that list I will get a large number of responses from people who want to buy them. There are a lot of realtors who want to sell them for me, I am quite sure.

Mr. **Noonan**. Additional questions?

Mr. **Harvey**. At the risk of appearing naive, given Marion's definition of naive as one who believes in the possibility of exchanges, it appears that the policies that have been established by the Review Board give priority status to lands that are suitable for disposal, under whatever criteria, over exchanges. Is that fair?

Mr. **Selfon**. First, we are talking only about priorities for sale for those lands which have been identified in the sale category, which is a tiny portion of the lands. Secretary Watt suggested and the Board agreed that a 2-year period in the marketplace was a fair period of time to try to place properties for sale and see if they could be sold over exchange.

However, even to that there are certain exceptions and those are that it would not apply to properties that are being exchanged with the Forest Service for boundary exchange purposes. In other words, if we could do that, we would do that instead of waiting for 2 years to see if it could be sold or if the exchange of property would enhance the salability of another piece of property for development or for sale.

In other words, we are trying not to cut off our nose to spite our face with respect to those properties—and then there is another general and important exception and this I know is what the Secretary was referring to when he asked about the guidance this morning.

The Board will be listening to exceptions to this general policy that are brought forward by the Department of the Interior as specific cases develop, and that, of course, is a dilemma. But we have agreed that we will have 2 years to try to sell off those properties which were identified for sale and that is the same 2.7 million acres for sale that I indicated have already been identified. I have got 2 years to try to sell them and we will see what happens then.

Mr. **Schultz**. I would like to make one response from a constituent of mine at home that was a rancher who is concerned with acreage that had already been shown to be in the resource management by the BLM as land that was unmanageable or was completely circled by private property and his concern was if, in fact, there was no special treatment given for ranchers, which I think is a valid concern, and it is hard maybe to sell to ranchers cheaper than you can sell to someone else when you are selling a public possession, but would the possibility exist? And I would like for you as well as Interior to think about this, that prior to selling of an isolated tract that is in the interior or circled by private property that the rancher be given an opportunity, one, to purchase it. If he cannot purchase it at a reduced rate or some sort of an economic circumstance that he could afford to get it, that he be given an opportunity to do a land trade with BLM for land that is on the exterior of his property.

So we will not be selling an isolated 30- or 40- or 60-acre tract in the middle of a ranch in Colorado where we have an ingress and egress law that we would have to allow access into the middle of a person's private property, bring a lot of people into it. Potentially, a rancher could be faced with bidding against a group of 30 or 40 people who are interested only during the hunting season in having that property and could easily afford to pay $1,000 or $2,000 an acre.

And if there was that type of a framework, at least the rancher could get the property set to the side of his property so he could still have a manageable unit in one piece and if he has to give up something, it is something that is on the edge that has access from possibly a county or public road or other BLM property and not through his private property.

Senator WALLOP. The neat thing to do if you were irritable with your neighbor is to buy the piece——

Mr. SCHULTZ. Right in the middle of it.

Senator WALLOP. I agree with the other thing, by any stretch of the imagination if there is a bidding procedure and the rancher does not match bids, he ought to have the right of matching at that bare minimum. But what you are saying is really true. There is another problem in there. I don't know whether you all addressed it or not, and I don't really want to fuzz the issue, except sooner or later somebody is going to have to and that comes down to water rights and what may or may not be attendant to those lands by virtue of Federal ownership and obscure Federal reserve rights that have not been stated.

If the Federal Government sells off all of this or any of its lands, they ought not to reserve to themselves the water that was intended to them. I mean those are problems we are really going to have to deal with in some kind of way. I don't really—I don't think any disposal ought to take place without addressing that issue right directly within the transfer, so that somebody does not come back down the road 30 years later and say this has a lot of water and we did not transfer that with you or some other kind of serious problem that might arise with water.

Mr. NOONAN. Rex, did you have a question?

Mr. RESLER. A comment, Pat. I may have carefully considered the snide reference to a misguided asset management policy in the context that here we are spending a great deal of time and effort, and rightly so, and the prospect of disposing of some surplus lands to raise a few, maybe 17.5 billion the way I have calculated, in the next 4 years.

While at the same time, the tremendous national assets that we are talking about in the order of $500 billion to maybe $1 trillion of value, if we look at both commodity and noncommodity value, we are doing a very poor job of managing those public lands, especially the administration is equally inept in bringing about the kind of management they are capable of.

A forest land is functioning at 50 percent of biological capability, range lands about the same thing. A billion dollars in capital investment in recreation facility is declining in effectiveness because of lack of maintenance, et cetera.

I am just wondering if in this business if land administrators would be inclined to consider some other alternatives. One of which I suggested in my paper and there may be variations on that theme. We are trying to bring about a process, a multiyear process that would be aimed at insuring the resources and the direction of the agencies to effectively manage those lands for the good of all people.

I want to explain why I have referenced the misguided asset management policy. I think it is way too narrow. You are looking at one aspect of asset management. And I wanted to mention that for the record and I suspect this is the first opportunity I will have to do that.

Mr. **Noonan**. Rex, I have a question. Why has there been ineptness over the years in the management of Federal lands? Has it been professionalism or has it been a lack of professionalism or is it funding or a combination?

Mr. **Resler**. It is an extremely complex process. Only with the advent of RPA and subsequently FLPMA, which is now evolving into a long and final process, has there been an adequate base to really look at what the long-range potential is to make logical decisions about public investments in these lands.

Every administration comes in looking at the budget on an annualized basis, the objectives particularly in periods of high inflation to hold the budget down. OMB has a tremendous intention for allocating across the board percentage reduction to all departments, regardless of whether or not we are talking about productive capital improvements or various other kinds of expenditrues.

The Federal land base is the only profit center in the whole Federal system. We are managing it poorly, which leads to all kinds of charges of poor management and those challenges and criticisms, I think, are valid. I think there has been no significant way toward the concerns that were expressed in the Sagebrush Rebellion when you see lands lying out there producing much less than the economists know they are capable of producing and it hurts.

And there is always frustration in reaction to it. I don't think we can continue indefinitely to give them that same kind of denial and neglect we have done for many years. I think there are some other processes that ought to be explored. It would cost money, but it could be directed in a way to generate revenue and substantial increases for the economy.

Mr. **Noonan**. Are you also sympathetic to the idea of leasing, long-term and short-term leasing to private interests for management?

Mr. **Resler**. We have had some experience with that and, no, I am not enamored of it. I would agree from the aspect that Marion suggested that it is innovative. I personally would like to see what the public benefits are and I would want to be sure that there would indeed be an improvement in the process rather than coming too quickly enthralled with the idea of innovation for the sake of innovation. I am not sure that leasing itself, by the time you get through with all of it, would accomplish that much.

Mr. **Noonan**. Mike.

Mr. **Harvey**. You just made a fairly good argument to depart from privatization. One of the reasons I think that this has occurred—Rex might want to comment—is that politically Congress has not attempted to manage this. If you have been around here long enough you know that when John Kennedy became President, he set up part of the Federal budget in his capital improvement budget. He did it both ways. He said this is my budget and this is the way it ought to look. Congress said, "Thank you for sending us this funny document." and that was about the end of it.

As Rex pointed out, FLPMA does not have the same 5 years planning requirement as RPA, although RPA covers the forest and range land resources, not just those administered by the Forest Service. Congress did put in a 4-year authorization process. For the first time, there was authorization in the statute on a regular basis for public land programs. Prior to that time they were always just there and the authorization was not mandatory.

We did a 4-year authorization, I must say with almost no attention in the Congress, and we decline to do it again. There is a lack of, a certain degree of a lack of interest in Congress in that kind of a plan. Part of it perhaps goes to the very issue as was pointed out earlier that tomorrow's voters don't vote today; in Congress anyway, the immediate crowds out the important, constantly.

Mr. NOONAN. The short run for the long run. Any other comments or questions or thoughts?

Senator, I would like to turn it over to you. We have had a long afternoon of open and candid discussions on a very important subject. We have been frank and I think a lot of new and innovative ideas have come out, and we have digested some old ones as well.

We have a large agenda tomorrow that, in fact, will get into more detail on some of the issues we discussed today. I know I speak for all of us in saying we very much appreciate your leadership that brings us here today.

Senator WALLOP. I want to express my thanks to all of you on the panel and the respondents. I do not know a better means to get people's feelings out and have a reaction to them. The problem that we usually face in the Congress is the adversarial situation where there is a proposal that some like and some don't and any hope of dialog about other ideas or other means of approaching the same issue disappears.

It requires a lot of you to give your time to do this and I appreciate it and I look forward to the proceedings tomorrow.

And I would just say that one of the nice things that has taken place from last year is that there are some administrative responses to what we did already. And now perhaps when we get done with these we can get some more specific legislative responses and have them come because people want them and maybe perhaps eliminate some of the automatic knee-jerk reactions that go with it.

Thanks to you all. I appreciate it and we will see most of you later.

[Whereupon, at 4:50 p.m., the committee recessed, to reconvene Tuesday, June 15, 1982, at 9 a.m.]

WORKSHOP ON LAND PROTECTION AND MANAGEMENT

TUESDAY, JUNE 15, 1982

WASHINGTON, D.C.

The subcommittee met, pursuant to recess, at 9:05 a.m., in room 3110, Dirksen Office Building, Hon. Malcolm Wallop, presiding.

Present: Senator Wallop and Congressman Lagomarsino.

Also present: Tony Bevinetto, professional staff member; D. Michael Harvey, chief counsel for the minority; Thomas B. Williams, professional staff member for the minority; Patrick Noonan, Chairman, Conservation Resources Group; William Reilly, president, the Conservation Foundation; George Siehl, Congressional Research Service; Ric Davidge, Office of the Assistant Secretary for Fish and Wildlife and Parks; Jack Hauptman, Brian O'Neill, Robert McIntosh, Don Humphrey, National Part Service; Charles Cushman, executive director, National Park Inholders Association; Paul Pritchard, executive director, National Parks and Conservation Association; Michael Preisnitz, vice president, Goff, Preisnitz & Associates; Ron Tipton, specialist, the Wilderness Society; Vernon V. Lindholm, Assistant Director of Lands, U.S. Forest Service; Dean Bibles, Director Land Resources, Bureau of Land Management; Walter McAllester, Chief, Division of Realty, Fish and Wildlife Service; Willis Kriz, Chief, Land Resources Division, National Park Service; Dan Pike, president, Open Lands Real Estate, Denver, Colo.; David Morine, vice president, Land Acquisition, the Nature Conservancy; William Shands, senior associate, the Conservation Foundation; Louis Twardzik, Michigan State University, Department of Parks and Recreation Resources; Jon Kusler, Jon Kusler Associates; Bernard Schaefer, Assistant Chief, Division of Realty, Fish and Wildlife Service; Richard Curry, Richard Curry Associates; Lindsay Hooper, Office of Senator Malcolm Wallop; Kingsbury Browne, Esq., Hill & Barlow; Edward Thompson, Esq., American Farmland Trust; George Horkan, Esq.; William Hutton, Esq., Trust for Public Land; Paul Pritchard, Executive Director, National Parks and Conservation Association; Eugene Steurele, Office of Tax Analysis, Department of the Treasury; Peter Raynor, Office of the Solicitor, Department of the Interior; Derrick Crandall, President, American Recreation Coalition; Barry Tindall, Director of Public Affairs, National Recreation and Park Association; Lloyd Irland, State economist, State of Maine; Helen Foxwell, Kampgrounds of America; and William Hopkins, Department of Natural Resources, State of Delaware, representing the National Association of State Outdoor Recreation Liason Officials.

OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator **WALLOP**. We will call the workshop to order and begin another long day. I just would like to comment I thought yesterday was interesting, but it was best noted I think for the attitude with which people gave statements, people who responded, and people in the audience who asked questions. So often when you deal with issues as emotional as preservation of land values or values on lands, and the kind of topics that we had here in front of us yesterday, emotion runs in front of the intellect, and surrounding issues often get lost in the emotion.

If we did no other service, I think we at least had one day's collective view of certain things, and everybody's interests were expanded by it. I hope that we can have the same thing today.

The moderators are under the same instructions to not back away from controversy, but also to not indulge emotion and rhetoric. We really do a service there. I only wish that members of the press who attended here had the patience or the perservence later to go and look at what was said during the course of the day. Reading "the New York Times" this morning, and reading the comments in "the Washington Post," it is unfortunate that they report about skimming the cream and then they merely skim the cream themselves. They sit here and when they hear what they want to satisfy their own particular need to gin up a little more emotion, they run off with that without relating the rest of the day's speakers. Which it is particularly interesting to me to hear the former Director of BLM, and very likely we are talking about the same 3 to 5 million acres that were identified in 40 acres and 53. It is time we were trying to move them then, and we are trying to move them now.

It does not sound as though there is something lacking in the obvious about certain of those, but that is not the point. My real point is that the extent that people don't mirror image the expected rhetoric of the other, no matter what side they come from, we have a productive process in this workshop. That is the reason for the design as a workshop rather than a hearing, the reason I think we have been successful, and the reason I am very much looking forward to what we hear today. Turning back to the moderator—Pat?

Mr. **NOONAN**. Thank you, Senator. We thank you again for this opportunity to continue our dialog, and we look forward to a fruitful discussion today.

Our first session is titled National Park case studies. This session will be broken into two parts. The panelists will present as a group an overview presentation, and then a discussion of two of the actual case studies. The entire presentation should take about 30 minutes. We will then turn it over to the respondents who will have 6 minutes to critique their comments.

I would like to introduce Rick Davidge, Office of the Assistant Secretary of the Interior, who will be directing the panelists. Ric?

[The prepared statement of Mr. Noonan follows:]

PUBLIC LAND EXCHANGES REVISITED
Remarks By
PATRICK F. NOONAN
Past President, The Nature Conservancy
June 15, 1982

The workshop on Public Land Acquisition and Alternatives held on July 9 and 10, 1981, provided for the first time in a public forum broad-ranging presentations and discussions on the role of public land exchanges in the American conservation movement. This paper will summarize many of those statements and seek direction for the future. Expert presentations by panelists representing the administration, state and county governments, industry, conservation groups and professionals in related fields provided an overview of the complex, yet unique, opportunity exchanges provide for intelligent natural resource management. It is complex because of the many overlapping legislative authorities. As one example, the U.S. Forest Service alone finds itself with some 25 various land exchange authorities available. Furthermore, consideration must be given to the requirements of other federal laws, executive orders, and regulations. The resulting process requires as many as 60 separate steps, and exchanges average some 18 months, with many extending well beyond that. It is an opportunity because under the Federal Land Policy and Management Act of 1976 (FLPMA) Congress recognized the importance of exchanges in managing the public lands to serve the national interest and provided a framework for an intelligent land-management program.

There are several provisions of FLPMA that bear on the question of land exchanges. Two subsections of the Act's Declaration of Policy [section 102(a)] provide:

> The Congress declares that it is the policy of the United States that --
>
> (1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;
>
> * * * * * *
>
> (10) uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage;

The provisions of FLPMA providing for land acquisitions (Sec. 205) specifically authorizes the acquisition of public lands by exchange. Section 205(b) also provides, like section 102(a), that such acquisitions shall be consistent with the Interior Department's mission and applicable land-use plans.

Most important of all is a specific provision governing exchanges, which reads as follows:

> SEC. 206. (a) A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein

within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: Provided, That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

(b) In exercising the exchange authority granted by subsection (a) or by section 205 (a) of this Act, the Secretary may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired. For the purposes of this subsection, unsurveyed school sections which, upon survey by the Secretary, would become State lands, shall be considered as "non-Federal lands". The values of the lands exchanged by the Secretary under this Act and by the Secretary of Agriculture under applicable law relating to lands within the National Forest System either shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. The Secretary concerned shall try to reduce the amount of the payment of money to as small an amount as possible.

> (c) Lands acquired by exchange under this section by the Secretary which are within the boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable to the National Forest System. Lands acquired by exchange by the Secretary under this section which are within the boundaries of National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails, or any other System established by Act of Congress may be transferred to the appropriate agency head for administration as part of such System and in accordance with the laws, rules, and regulations applicable to such system.

While FLPMA expanded considerably the federal government's exchange authority, it also imposed a number of new procedural requirements. Regarding flexibility, the act loosened a number of restrictions on land exchanges, particularly a liberalizing provision that allows the exchange of a wide variety of interests in land including possibilities for subsurface minerals, easements, etc., along with greater flexibility with the equal value problem. In the past a requirement that lands of equal value be exchanged precluded exchanges from taking place as appraisals rarely reflected equal values. Now differences can be compensated by cash transfers up to 25% of the value of the federal land.

The new procedures were designed to ensure that the public's interest is well served by any exchange. In so doing, the Secretary must give full consideration to better Federal Land Management and to a number of specified state and local needs. This is to be accomplished in the case of BLM with the preparation of Resource Management Plans (RMPs), which require preparation and review of environmental assessments and environmental impact statements and will cover large areas averaging 1,000,000 acres each. This is truly a resource management program of tremendous magnitude, especially when one realizes that the RMP's must be kept current to reflect changes in conditions and reflect changing resource conditions. This requirement also points out a major weakness since for exchanges to be a truly effective tool operating in the public interest, the financial resources must be available to do the planning and assessment required to make a large number of exchanges. To do otherwise is penny wise and pound foolish from a resource management perspective.

Large-scale exchanges offer an opportunity to improve the use and management of public and private lands in the West. As an example, the 174 million acres of public lands managed by BLM in 11 western states (excluding Alaska) are in fact distributed in random patterns and create administrative inefficiencies for both the public and private landowner. Moreover, the management of natural systems, which ideally should not recognize property boundaries, is all but impossible with fragmented, multiple ownerships.

If we accept the role exchanges can and should play in the management of our public lands, then what is immediately required is an expanded resource management planning program designed to manage our natural resources in the most efficient and cost-effective manner possible, consistent with the public interest provisions of FLPMA. Particular attention must be given to BLM's public lands for they are in fact the remnants of the public domain. The land nobody wanted as the West grew today represents enormous resources for mining, development, agriculture, conservation and other land uses. They also represent for their owners, the citizens of the United States, enormous potential to help achieve an intelligent, rational resource management program on their public lands.

Federal agencies in 1980 estimated the cost of acquiring the then authorized federal acquisitions at a price in excess of $3 billion. There is no way, given the economic climate today, that the funding will be available to buy out this backlog, let alone provide funding for new areas as well as operating and maintenance dollars. Certainly, funding must continue and exchanges can play a major role, but what is required is direction in the form of a coordinated federal effort--a bold carefully designed resource management program, operating under FLPMA, to identify those lands that should be retained in federal management and those lands which should be offered for disposal.

A simple objective acceptable to all interests would be to develop sensible ownership patterns based upon resource management values. The fact that over one million acres representing some 2,000 exchanges were transferred out of federal ownership in the period 1970-1980 indicates the potential is there. To date the missing ingredient seems to be the leadership.

The following thoughts are suggested as directions for the future:

Inventory - An aggressive, professional inventory program adequately funded and using FLPMA guidelines should be initiated. Funding to come from the Land and Water Fund or from a 5% fee on the proceeds of all sales, leases and royalties from public lands. Thus, resource exploitation compensates for resource planning and protection. An inventory program is never complete, but within 5 years all federal lands would have been cataloged for retention, disposal or further detailed study.

Resource Trust Fund - Properties approved for disposal could be either sold with 50% deposited in a newly established Resource Trust Fund or exchanged for authorized inholdings directly or via three-party exchanges. The Migratory Bird Fund would be a possible model for the Resource Trust Fund which could provide funds for the planning, acquisition and management of all Federal lands within the Interior and Agriculture Departments. Matching incentive grants could also be available to local and state jurisdictions for similar programs at their levels.

Management - In order to reduce operating and maintenance costs, every effort would be made to establish cooperative management partnerships providing shared responsibilities among levels of government and, where appropriate, with private interests.

Finally, consideration should be given to the following 10 actions to increase the effectiveness of the exchange program.

1. A coordinating entity should be established to ensure the cooperation of NPS, BLM, USFS and F&WS in the planning and exchange programs. Data bases should be comparable, and common access to surplus lands should be encouraged where a surplus site remains in public ownership after two years. The coordinating body should be at the highest level necessary to ensure involvement of all affected agencies.

2. Exchanges should be permitted across state boundaries where there is no objection by involved states within 30 days of notice.

3. A percentage of all resource sale and lease proceeds should go into a resource trust fund.

4. Advance rulings on gifts or bargain sales by IRS should be encouraged.

5. A training program should be established to encourage professional development in exchange techniques.

6. An exchange review process should be established uniform to all federal landholding agencies

7. Adequate funds to be provided by the affected agency for the related costs of an exchange, such as appraisals, environmental assessments, etc.

8. An Exchange Information System should be established for all sites approved for exchange within each landholding agency.

9. A task force should develop within 6 months, working in concert with the U.S. Geological Survey, a standard approach for the valuation of mineral interests to be included in an exchange, including public agency retention of royalty interests, etc.

10. The public agencies should develop a landowner awareness program, including pamphlets, so the public understands how to initiate an exchange along with the responsibilities of all parties involved.

In summary, we Americans find ourselves at a crossroads in public land management. While we can and should selectively add to the federal estate, we can and should, with equal vigor, trade out those lands for which continued public ownership is a liability to a sensible and balanced resource management program.

STATEMENT OF RIC DAVIDGE, OFFICE OF THE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. DAVIDGE. Thank you, Mr. Noonan and Senator Wallop. We appreciate the opportunity to be back here discussing an issue that you know I have been involved with for almost 3½ years now since working as a staff member in the Senate.

I brought a stack of papers with me today to highlight the question which will continuously be asked—why is there a land protection policy? There have been a series of general reports, Congressional Research studies, and Inspector General's reports, House and Senate hearings over the last two decades, addressing the problems of alternatives to land protection other than direct Government purchase, and unfortunately in some cases, condemnation. If you look at the volume and this is certainly not a complete library, you can see that this issue has been well debated, well documented, well investigated, and well reported. The stack of precedents alone would be as high as this stack of publications.

One of the things that we did in the Assistant Secretary's Office when we came into office last year was identify three major policy objectives of this administration. One dealt with the need for a new land protection policy, or at that time we were addressing land acquisition policy.

We made a systematic and thorough review of the legislative history and the administrative record and the GAO reports on this issue. We set up a work group within the Office of the Assistant Secretary which was managed by Mr. Jack Hauptman who is here today, and is now the superintendent of the Fire Island National Seashore. Mr. Hauptman put together what we would refer to as an interdisciplinary team, a team of acquisition specialists, resource managers, planners, alternative specialists, political activists, and a few other outside folks to try to give us the kind of dialogue inside the closet that we thought was necessary to provide the security of creativity.

One of the things in this entire approach and the case study process was that the teams were told their study would stand on its own. It would not be subject to change, and we wanted them to have the full academic freedom to go out and look at issues and to apply alternatives to fee acquisition and cash purchase and to see if it would work. The case studies represent I think a transitional point in the thinking not only of the National Park Service, but the other three agencies that are members of the Land and Water Conservation Fund Policy Group which includes the Forest Service, Fish and Wildlife Service, and the Bureau of Land Management.

The work group was prepared to draft policy which was rather extensive and had a series of enclosures dealing with various issues. One of the things that the work group identified rather quickly was the inadequacy of tools available to resource managers not only within the National Park Service, but within our Federal system to actively and aggressively and cost effectively protect the resource that they are charged to protect. Cost effectiveness became a very pressing issue, particularly in these tough economic times when the appropriations for Land and Water Conservation

Funds are slim, but one of the interesting things that came out of this debate and following discussions with people like Mr. Noonan and Mr. Reilly and Emery Castle and some of the other people involved in the last workshop was the observation that this policy is not dependent on the lack of Land and Water Conservation Funds. This policy is an appropriate policy, even if Congress chose to appropriate the full authorization every year for the Land and Water Conservation Fund.

The policy is reflective we believe of the intent of Congress, something that Mr. Cushman certainly has addressed a number of times around the country.

What is the intent of Congress when these areas are completed? We have done a systematic review of the enabling Acts and the acquisition languages of each of the acquisition areas of the National Park Service, Fish and Wildlife Service, and some of the Forest Service areas. We have the summary that we will provide to the committee for the record.

One of the things we see in the legislation except in a couple of isolated situations, particularly in the case of legislative taking, is that without a doubt that the Congress intended that only lands necessary be acquired and only that interest in land necessary be acquired to protect the resource and to provide for reasonably managed public recreational use. In fact, some legislation goes on in detail about the use of alternative protection mechanism. Cuyahoga Valley is a good example. It has been actively discussed in legislation.

The workshop that you had, Mr. Chairman, has spurred us on in the development of the policy and going out into the field, and testing the application of the concepts within the policy. The teams were managed by the National Park Service, not by the Assistant Secretary's office. Frankly, in my opinion, some of the case studies that came back were good. Some of them were lukewarm, and some of them I wasn't too happy about. But respecting the guarantee of academic freedom, we let them stand the way they are.

As I said, we looked at the case study process as a transitional point. Let me highlight a couple of things that happened in the process. Some of the superintendents of some of these areas became extremely skeptical on the application of the policy and case study. They were very nervous about expectations which would be raised by landowners in some of these areas, and those fears were valid fears. Certainly people that had been in some of the park areas for a number of years and told a number of stories saw an opportunity to be told some more stories, consequently there was a great deal of caution given to the case study teams on what kinds of things they would say and not say to landowners. They were cautioned not to raise or dismiss expectations but to do an academic study.

As I said, some of the superintendents were extremely skeptical of the process. However, we did a review in Denver in which all the members involved in the case study process came together with myself, the Director of the National Park Service, the Solicitor's Office, and a number of other representatives of the Department of the Interior. Something magic happened in Denver. We became very painfully aware that one of the biggest failures in our collective opinion, in the past, has been the specialty application, if you will, of our acquisition program, and we realized—in that exchange for 2½ days in Denver—that there is strength in interdisciplinary teams. We had superintendents stand up and say I have been told I can't do this, it is against the law, and the question came back from the Solicitor's Office, well, who told you that? Well, I don't remember. I think it was the last superintendent. He pinned it down and found out it wasn't against the law. A man had lost an opportunity for a donation of 200 and some odd acres. That is just one isolated situation. This went on for 3½ days. So one of the things that we learned out of the case study process is the need for active participation of interdisciplinary teams who can stand back from the political agendas of the area and look at these issues objectively.

The charge, and I was extremely critical of one of the case studies in Denver, was to go out and identify the resource that needs to be protected, and then identify the interest that is sufficient to protect that resource, and then identify alternative methods of protecting that resource. One of the case studies continued to complain about an area which was ecologically significant to that park and yet it was outside the boundary, and the study members were continually concerned about ways in which to deal with this issue.

I raised the question of why have you not recommended a boundary change to include the area. The case study teams were dumbfounded that I would even consider something like that. I considered that because the bottom line was what resource needs to be protected, and as you and I both know, Mr. Chairman, there has been a lot of discussion both in this committee and other committees about the way boundaries are drawn for areas not respective of ecological boundaries, but the case study team in that incident selectively decided not to consider that alternative. They did consider that alternative after the Denver meeting.

The bottom line of this policy, Mr. Chairman, and I think it is verified in the eight case studies, is that we can protect a greater amount of resource within those units of the agencies that use the Land and Water Conservation Fund faster, more cost effectively, cheaper, and quicker in totality. In other words, Mr. Chairman, I believe an aggressive application of this policy, lessons learned in the case studies and the process that Mr. Humphrey will be discussing later on implementing the policy, will give this administration the opportunity to say that we have completed the protection strategies and quite possibly the protection of the interests of the National Park Service, Fish and Wildlife Service in particular that otherwise would not be protected in the next 2 to 3 years.

I have a formal statement, Mr. Chairman, that I will submit for the record, and I would like to introduce the other members of the team.

Jack Hauptman comes from the former Heritage Conservation and Recreation Service. He was the project manager of this effort and did an outstanding job running a national program in a very short time period. The products are on the table today. He is now superintendent of the Fire Island National Seashore, and we have a lot of great hopes for him there and the solutions to many problems.

Don Humphrey who is taking over for Jack Hauptman on the project, has been a strong advocate of alternative mechanisms for protection and is involved in the direct implementation of the policy within the National Park Service. He will give a sumup presentation to the panel.

Bob McIntosh presently is superintendent of the Gateway National Recreation Area in New York, and was involved in coordinating the Eastern States teams, and Brian O'Neill to my left is now assistant superintendent at Golden Gate National Recreation Area. He too is formerly from HCRS, and was involved in the coordination of the Western States. In addition to learning that we need interdisciplinary teams, we also learned that we need more tools. As I said in my opening statement, the tools that are available to resource managers are practically insufficient. Some of those tools need to be addressed administratively, some of those possibly legislatively. This administration I believe is committed to the active and aggressive implementation of these policies.

This policy does not preclude the use of fee acquisition. This policy does not preclude the discriminate use of condemnation and declarations of taking which will be verified in the case study discussion.

I will turn it over now to Jack Hauptman who will lead you into the case studies.

[The prepared statement of Mr. Davidge and summary follow:]

STATEMENT OF RIC DAVIDGE, OFFICE OF THE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR, FOR THE PUBLIC LANDS WORKSHOP, JUNE 15, 1982

ACCOMPANIED BY:

JACK HAUPTMAN, ROBERT McINTOSH, BRIAN O'NEILL, AND DONALD HUMPHREY, NATIONAL PARK SERVICE

Last year's workshop on public land acquisition and alternatives produced a wealth of innovative ideas and recommendations. In response to the Subcommittee's first workshop and recommendations by the General Accounting Office, the Interior Department developed a new policy statment on land protection. After a period for public review and comment, the statement was published in the Federal Register on May 7, 1982.

Policy Elements

Although public response has been overwhelmingly favorable, this policy initially seems to have been greeted with some skepticism by a few members of the conservation community. The policy is a very general statement; by design adequately broad to address the diverse programs of the National Park Service, Fish and Wildlife Service, Bureau of Land Management, and Forest Service. It is a simple statement of commitment to protecting the nation's parks, wildlife refuges, forests, and recreation areas. Previous policies and practices have focused on Federal fee purchase of private lands. The new policy simply provides that the agencies using the Federal portion of the Land and Water Conservation Fund will:

- identify the land that needs to be in Federal ownership;
- use to the maximum extent practical cost-effective alternatives to Federal fee purchases of private land;
- cooperate with landowners, other Federal agencies, State and local governments, and the private sector; and

- formulate plans for land protection to assure that areas are adequately protected.

The Case Studies

While the new policy statement was being developed and refined, the National Park Service initiated case studies of resource protection alternatives for eight national parks. The case studies were undertaken in response to specific recommendations by the General Accounting Office that the National Park Service more aggressively use alternatives to fee acquisition and determine what private land is compatible with the park purposes. The studies also were designed to explore some of the suggestions made during the Subcommittee's workshop last July. The eight study areas were selected to cover a representative sample of types of parks and geographic regions for a totally open investigation of creative approaches in protecting park resources.

The case study teams were formed to include the combination of skills and experience necessary to address complex protection and management problems. Each team included the Superintendent, the principal planner, a realty specialist, and an expert in protection alternatives. The team's basic mission was to clearly define the natural, cultural, and visitor use objectives for the park and identify all reasonable alternatives for achieving those objectives. The teams were encouraged to be creative and professional; not to be constrained by any concerns about political feasibility but to tell us how to protect the resources. If a protection tool was thought "not to work" the team was expected to explain why.

The case studies considered a remarkable variety of land protection tools and strategies in addition to the traditional approach of fee simple purchases. These covered the broad categories of:

- cooperative agreements and other nonacquisition approaches
- regulatory approaches, zoning and air and water quality controls
- financing tools, tax incentives for donations, local revenues, revolving funds, exchanges
- less-than-fee interests, positive and negative easements.

Due to time constraints, some of the studies may have too readily dismissed promising approaches based on traditional views rather than hard analysis. However, in most instances if the study team found obstacles to use of a creative new approach, they proposed that necessary steps be taken to overcome those obstacles.

The case studies generally confirmed that there are no simple solutions to the management challenges confronting the National Park System. No one set of protection tools was found to be inherently better than another. The most basic conclusion is that land protection techniques need to be tailored to fit the characteristics of individual areas. For example, the type of protection and management necessary to carry out the NPS mission and Congressional mandates in Grand Teton require different tools than those needed in providing recreational opportunities on the Chattahoochee.

Although each study area has a variety of unique characteristics, the process did reveal several general points:

1. Acquisition of land or interests in land alone is often not the only effective approach to assure protection of park resources from threats within and outside of current boundaries. The case studies identify alternatives which need to be used to provide a minimum level of protection and are not simply a substitute for buying land.

2. Federal, State, and local regulatory authorities are an important element in a park protection strategy, but they also cannot independently provide long term assurances of resource protection to meet NPS objectives.

3. Acquisition of fee or less than fee interests is an essential part of a park protection strategy and requires at least some appropriated funds.

4. Fee acquisition generally provides the best long term assurance of ability to manage land in accord with NPS objectives. However, the advantages of less-than-fee acquisition must be evaluated on a case by case basis.

5. Donation, exchange, or purchase with State, local, or private funds can provide viable alternatives to direct Federal purchase of land or interests in land using appropriated funds. More widespread use of these approaches is possible if legal and administrative obstacles are removed.

6. Park management objectives are often not expressed with adequate clarity or precision to guide development of cost-effective land protection plans. Revisions in planning procedures to emphasize defining objectives and cost-effective methods of achieving the park's basic mission would facilitate improvements in land protection efforts.

7. Planners, realty specialists, and park managers are frequently unfamiliar with the full range of land protection techniques and how to use them to save money. Many land managers need special training, staff, funds, and time to participate fully in new approaches to park protection.

8. Managers need incentives to try new approaches to protecting resources.

9. Most areas need a better base of information about their natural and cultural resources to define compatible and incompatible uses.

10. Changes in legislation and NPS or Departmental policies will be required to implement many recommendations to assure adequate protection of park resources.

11. Implementation of case study recommendations may produce substantial savings for management as well as acquisition, but they also may result in a higher quality of resource protection by improving cooperative relationships with State and local governments, other federal agencies, and the private sector.

Before the study team coordinators go into some details on two of the cases, we would like to quickly review some of the key suggestions in the individual reports. We must emphasize that the recommendations in the case studies do not reflect official views or positions of the National Park Service or the Department of the Interior. These are the suggestions of the study teams and implementation of the recommendations will be considered through normal channels after legal reviews, public participation, and consultation with the appropriate Congressional committees.

Appalachian Trail

- continued cooperative management approaches
- expanded purchase and sell-back authority including a revolving fund and support for provisions in H.R. 861
- encouragement for local zoning of adjacent land
- expanded cooperation with land trusts
- legislation to facilitate exchanges
- analysis of cost effectiveness of easements

Biscayne National Park

- proceed with acquisition of offshore keys (about 55 acres)
- strengthen cooperative relationship with regulatory agencies to protect shoreline (4,500 acres) and adjacent lands
- expand county transferrable development rights program and establish a park protection zone
- share responsibility with the State and county for acquisition, using local revenues
- limit availability of flood insurance on coastal barriers
- encourage federal agency actions to be consistent with park protection plan

Chaco Culture National Historical Park

- resolution to problems about appraisal of mineral values
- funding to cover administrative expenses of exchange
- efforts to streamline exchange processes
- cooperation with Indian tribes
- cooperative agreements on management of archeological sites

Channel Islands National Park

- exchanges involving OCS leases in vicinity of park
- purchase with reservation of concession operation rights
- exchanges involving GSA or BLM land
- cooperative management agreements with Coast Guard and Navy
- tax inventives for donation

Chattahoochee River NRA

- adjustments in park boundaries
- improvements in State and local protection efforts
- legislation to help protect the river corridor
- model analysis of cost-effectiveness of alternative plans
- clarification of legal authorities for NPS to manage less-than-fee-interests
- combination of fee, easements, exchanges, zoning, cooperative management agreements, air and water quality standards.

Grand Teton/Jackson Hole

- designate Kelly as a developed area, to be protected in cooperation with efforts by the county
- purchase from willing sellers with reservation of life estates
- purchase easements on several properties
- allow some commercial inholdings to remain as long as use is compatible with park purposes
- exchanges involving NPS, FW, or BLM land
- Federal legislation recognizing Jackson Hole as a scenic area
- continued funding for opportunity purchases

Jean Lafitte National Historical Park

- direct purchase of fee or easement for certain areas
- encouragement for donations of easements
- purchase and sell-back with restrictions
- adjustments in boundaries between the core area and park protection zone

Kaloko-Honokohau National Historical Park

- expansion of exchange authority to include excess as well as surplus property
- authority for interstate exchanges and other steps to make property available for trades
- a special credit card account for surplus Federal properties

The National Park Service has taken several steps in response to the general findings and individual recommendations of the case studies.

Regional offices have been requested to develop detailed land protection plans which build on the case study recommendations. At the Washington level, the Director has asked management to:

- develop incentives for field staff to explore and use innovative protection tools
- assure that budget requests are responsive to the case study recommendations
- assess relative costs and advantages of easements
- develop guidelines and training materials to encourage donations
- recommend specific actions to facilitate exchanges
- develop clearer policies on NPS cooperation with local zoning and other regulatory agencies
- improve planning guidelines including more attention to analysis of costs and benefits
- provide training opportunities on how to select and use new approaches to land protection
- assist in developing legislative proposals concerning tax incentives for donation, exchanges, revolving funds, and coordination with other Federal agencies

At the Departmental level, we are pursuing several specific issues requiring legislation or policy initiatives. These include:

- negotiations to facilitate exchanges consistent with procedures of the real property review board
- refinement of proposals for tax incentives including credits for qualifying donations of land or interests in land

- adjustments in priorities for funding to implement recommendations in areas with approved plans for land protection
- potential use of exchanges involving OCS leases
- authority to establish a revolving fund in individual units for proceeds of purchase and lease or sell back arrangements
- provisions to assure that actions of other federal agencies are consistent with approved plans for land protection
- stronger cooperative efforts on dredge and fill permits under Section 404 of the Clean Water Act

As you can see, the task before us requires cooperation on many fronts. We are committed to following up on the innovative suggestions which have surfaced from the case study process and applying the concepts in future planning for land protection. Our basic objective remains: to achieve the greatest amount and quality of resource protection possible, consistent with practical constraints on funding. The case studies have demonstrated that new approaches to land protection can stretch available funds, and in many instances provide a better quality of resource protection than would be possible if we try to buy every parcel of land in fee.

SUMMARY:

SELECTED AUTHORIZING LEGISLATION RELATING TO ALTERNATIVES TO FEE SIMPLE ACQUISITION

A Report Prepared by
The Division of Federal Lands Planning

May 5, 1981

Introduction

This paper abstracts selected legislation authorizing alternatives to fee simple acquisition. Part I contains provisions authorizing alternatives to fee simple acquisition that occur nearly universally in the legislation. These "Standard Provisions" have not been repeated in abstracts of specific Acts.

Part II presents laws authorizing particular parks and recreation or conservation areas. Entries are arranged alphabetically, according to the following format: Area Name. State. Public Law Number. Date of Enactment. Pertinent Amendments. Text. (The text is in two columns. The right column summarizes the passages from the Act, the left column provides a key word for quick reference.) Unless otherwise stated, "Secretary" refers to the Secretary of the Interior.

Part III contains abstracts of "generic" laws treating land conservation (e.g., The National Trails System Act). These entries follow the same general format as those in Part II.

No attempt has been made to include every area authorized by Congress. Acts in which no alternatives to fee are specifically authorized have been excluded. Also omitted are Acts in which only the Standard Provisions are found.

An Index of selected alternatives to fee follows the summaries.

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Part I

Standard Provisions

Standard Acquisition Authority

"The Secretary is authorized to acquire by donation, purchase with donated or appropriated funds, transfer from any other Federal agency, or exchange, any lands, waters, or interests therein which are located within the boundaries of the [area] as needed for the purposes of this Act."

Limitation on Acquisition of State/local govt. land

"Any lands or interests therein owned by the State, or any political subdivision thereof may be acquired only by donation."

Severance Costs

Surplus Property

When a tract of land is only partly within the boundaries of a recreation area, the Secretary may acquire all or any portion of the land outside of such boundaries in order to minimize the payment of severance costs. Land acquired outside of the boundaries of the area may be exchanged for non-Federal land within the boundaries, and any portion of land not utilized for exchanges shall be disposed of according to the provisions of the Federal Property and Administrative Services Act.

Mineral Rights

"The Secretary may permit the grantor a reservation of all or any part of the minerals or of any other interest or right of use in such lands or waters on such terms and conditions as the Secretary may deem appropriate."

Limitation on Acquisition of Improved Property

Right of Use and Occupancy

"...Any owner or owners of improved property on the date of its acquisition by the Secretary may, as a condition of such acquisition, retain for themselves and their successors or assigns a right of use and occupancy of the property for noncommercial residential purposes, for twenty-five years, or, in lieu thereof, for a term ending at the death of the owner or his spouse whichever is later." "The term 'improved property' shall mean a detached, noncommercial residential dwelling...together with so much of the land on which the dwelling is situated, the said land being in the same ownership as the dwelling...."

Transfer	"Notwithstanding any other provisions of the law, any Federal property located within the boundaries of the recreation area may, with the concurrence of the agency having custody thereof, be transferred without transfer of funds to the administrative jurisdiction of the Secretary for the purposes of the recreation area."
Water Resource	"In planning for the development and public use of the recreation area, the Secretary shall consult with the Secretary of the Army to assure that public use of adjacent or related water resource development or flood control projects and that of recreation area are complementary."
Exchange	"When acquiring land by exchange the Secretary may accept title to any nonfederally owned land located within the boundaries of the [area] and convey to the grantor any federally owned land under the jurisdiction of the Secretary which is located in the same State as the non-Federal property to be acquired. The lands so exchanged shall be approximately equal in fair market value, but the Secretary may accept cash from or pay cash to the grantor in order to equalize the value of the lands exchanged."

Part II

Specific Areas

Allegheny Portage Railroad National Historic Site and the Johnstown Flood National Memorial. Pennsylvania. P.L. 88-546. 8/31/64.

Cooperative Agreements	The Secretary is authorized to enter into cooperative agreements with the State of Pennsylvania, political subdivisions, corporations, associations or individuals to provide for the preservation and interpretation of the remaining portions of the Allegheny Portage Railroad route not included within the National Historic Site, and to further commemorate the Johnstown flood.

Antietam National Battlefield. Maryland. Amendment to Act of April 22, 1960. P.L. 95-625. 11/10/78.

Acquisition limited to Easements	This amendment to the original Act establishing the Antietam National Battlefield authorizes the acquisition only of scenic easements over additional lands specified.

Arches National Park. Utah. P.L. 92-155. 11/12/71.

Leases Grazing	The Secretary shall permit persons holding grazing leases to continue grazing on park land and to renew such leases for one period. Owners and operators of cattle and sheep herds may continue to trail their herds on traditional courses used prior to the Act.

Assateague Island National Seashore. Maryland and Virginia. P.L. 89-125. 9/21/65.

Cooperative Agreements	The Secretary is authorized to enter into agreements with the State of Maryland relating to the use and management of a bridge from the mainland to Assateague Island.

Badlands National Park. South Dakota. P.L. 90-468. 8/8/68.

Acquisition limited to Rights-of-Way and Easements	The Secretary of Interior may acquire only rights-of-way and scenic easements in the portions of the Park located outside the boundaries of the gunnery range used by the U.S. Air Force.
Grazing and Minerals	The Oglala Sioux Tribe may continue to use former tribal lands within the park for grazing purposes and mineral development.
Cooperative Agreements	Cooperative agreements with the tribe may convey to the Department of Interior up to forty acres of land in the Pine Ridge Indian Reservation for the purpose of erecting permanent facilities to be used to interpret the natural phenomena of the park and the history of the Sioux Nation.

Bighorn Canyon National Recreation Area. Wyoming and Montana. P.L. 89-664. 10/15/66.

Recreational Facilities Development	The Crow Indian Tribe is permitted to develop and operate water-based recreation facilities subject to limitations specified by the tribal council and approved by the Secretary.

Canyonlands National Park. Utah. P.L. 88-590. 9/12/64.

Grazing	Grazing privileges held at the date of approval of the Act may be retained for the duration of the lease and such leases may be renewed for one period.
Rights-of-Way Limitation on Acquisition	Lands and interests in lands outside the park may be acquired as rights-of-way, but such acquisitions may not exceed 125 acres per mile.

Cape Cod National Seashore. Massachusetts. P.L. 87-126. 3/7/61.

Limitation on Use of Condemnation Zoning Regulations & Standards	The Secretary's authority to acquire private residential property by condemnation shall be suspended as long as the local governments in the area have in force and applicable to such property valid zoning laws approved by the Secretary. The Secretary shall issue regulations specifying standards for the Secretary's approval of such zoning bylaws. The Secretary may issue amended regulations for approval of zoning bylaws whenever changed or unforeseen conditions render such changes necessary.
Certificate of Suspension of Condemnation Authority	The Secretary shall issue to interested parties a certificate indicating that the Secretary's authority to condemn has been suspended with regard to specified properties.
Advisory Commission	The Cape Cod National Seashore Advisory Commission consists of ten members appointed by the Secretary from recommendations submitted by State and local representatives. The Commission terminates after ten years.

Cape Lookout National Seashore. North Carolina. Amendment to Act of March 10, 1966. P.L. 93-477. 10/26/74.

Donations with Reversionary Clause	The Secretary can accept lands donated by the State of North Carolina subject to a reversion clause stating that the property must continue to be used as a national seashore.

Capitol Reef National Park. Utah. P.L. 92-207. 12/18/72.

Grazing	Any grazing privileges held at the date of approval of the Act may be retained for the duration of the lease and such leases may be renewed for one period.

Chamizal National Memorial. Texas. P.L. 39-479. 6/30/66.

Comprehensive Plan Land Use Planning	The Secretary may defer the establishment of the memorial until the City of El Paso or other governmental agency of the State has submitted, and the Secretary has approved, a comprehensive plan for the development of the remaining land acquired by the U.S. under the Chamizal Convention.
Coordination	The Secretary is authorized to cooperate and consult with the City and County of El Paso, Texas Western College, local historical and preservation societies and other interested government agencies, associations and persons in the utilization and preservation of the memorial.

Channel Islands National Monument. California. P.L. 93-477. 10/26/74.

Cooperation	The Secretary may accept a donation not to exceed five acres on which to build a mainland headquarters for the National Monument, provided that no lands or any interest in lands may be accepted until a mutually satisfactory agreement has been drawn up on the design for facilities, a timetable for their construction, and an agreement concerning public access to such facilities.

Chattahoochee River National Recreation Area. Georgia. P.L. 95-344. 8/15/78.

Cooperative Agreements Intergovernmental Planning	The Secretary may enter into cooperative agreements with the State of Georgia or its political subdivisions in the planning and interpreting of non-federal publicly owned lands within or adjacent to the recreation area to assure that they are used in a manner consistent with the Act.

Chesapeake and Ohio Canal National Historical Park. Maryland and West Virginia. P.L. 91-664. 1/8/71.

Limitation on Acquisition Cooperative Agreements	No lands owned by any State can be included in the boundaries of the Park unless they are donated to the U.S., or until a cooperative agreement is negotiated which assures the administration of such lands in accordance with established policies for national parks.
Coordination with State and Local Plans	The Secretary shall take into account comprehensive local or State development, land use, or recreational plans affecting or relating to areas in the vicinity of the canal and wherever practicable, exercise the authority granted by the Act which he finds will not conflict with such State or local plans.
Access	The Act cannot adversely affect any pre-existing valid rights or permits issued with or relating to areas in the park.
Advisory Commission	The Chesapeake and Ohio Canal National Historical Park Commission has twenty-two members appointed by the Secretary from recommendations submitted by State and local representatives. The Commission terminates after ten years.

Clara Barton National Historic Site. Maryland. P.L. 93-486. 10/26/74.

Acquisition	Land and improvements may be acquired only by donation and the donation of any privately owned lands within the historic site may not be accepted unless and until the property is vacant.

Cumberland Island National Seashore. Georgia. P.L. 92-536. 10/23/72.

Limitation on Acquisition Trusts Preservation Agreement	If the landowners on Little Cumberland Island enter into an irrevocable trust or some other irrevocable agreement for the preservation of the resources of Little Cumberland Island which, in the Secretary's judgement sufficiently assures the protection of those resources, the authority of the Secretary to acquire such lands shall be suspended for the time the trust is in effect.

Cuyahoga Valley National Recreation Area. Ohio. P.L. 93-555. 12/27/74.

Easements Limitation on Acquisition	Private residential land is subject to scenic-easement purchase. The Secretary shall not acquire privately owned lands used for public recreation purposes unless he determines that such lands are essential to carry out the purposes of the Act. Fee title to improved properties cannot be acquired unless the Secretary finds that lands are being used or threatened with uses detrimental to the purposes of the recreation area or unless such acquisition is necessary to fulfill the purposes of the Act.
Cooperative Agreements	The Secretary may enter into cooperative agreements with the State of Ohio for rescue, firefighting and law enforcement.
Historic Sites Inventory	The Secretary, in consultation with the Governor, is to inventory and evaluate all sites and structures within the recreation area for potential historical, cultural, architectural significance.

Zoning	The Secretary may, at the request of any local government having jurisdiction over land located within or adjacent to the recreation area, assist and consult with the appropriate officers and employees of such local government in establishing zoning laws or ordinances which will assist in achieving the purposes of the Act.
Interagency Cooperation	The authority of the Secretary of the Army to undertake or contribute to water resource development within the recreation area shall be exercised in accordance with plans which are mutually acceptable to the Secretary of the Interior and the Secretary of the Army.
Advisory Commission	The Cuyahoga Valley National Recreation Area Advisory Commission consists of thirteen members appointed by the Secretary from recommendations submitted by State and local representatives. The Commission terminates after five years.

Ebey's Landing National Historical Reserve. Washington. P.L. 95-625. 11/10/78.

Comprehensive Planning	The Secretary shall formulate a comprehensive plan for the protection of the reserve.
Zoning Land Use Controls Cooperative Agreements Transfer	When the State or appropriate units of local government have enacted zoning ordinances or other land use controls which the Secretary judges adequate to protect and preserve the area in accordance with the comprehensive plan, the Secretary may, through cooperative agreements, transfer management and administration of the property to the State or units of local government.

Technical Assistance	The Secretary may provide technical assistance to the State or unit of local government in the management of the reserve.
Financial Assistance	The Secretary may make periodic grants to the State or local units of government for the costs of operating and protecting the reserve.

Fire Island National Seashore. New York. P.L. 89-244. 10/9/64.

Limitation on Use of Condemnation Zoning	Private residential land cannot be acquired by the Federal Government without the owner's consent, provided the local zoning agency has in force and applicable to such property a duly adopted, valid, zoning ordinance that is satisfactory to the Secretary.
Regulations and Standards	The Secretary shall issue regulations, which may be amended from time to time, specifying standards for zoning ordinances which must meet the Secretary's approval.
Certificate of Suspension of Condemnation Authority	The Secretary shall furnish to any party in interest, upon request, a certificate indicating that the Secretary's authority to acquire by condemnation is suspended with regard to certain properties.
Advisory Commission	The Fire Island National Seashore Advisory Commission is composed of fifteen members appointed by the Secretary from recommendations submitted by State and local governments. The Commission terminates after ten years.

Fort Washington Parkway. Maryland. P.L. 90-495. 8/23/68.

Easements Acquisition by Joint Funding	The Secretary is authorized to acquire easements and other less-than-fee interests in buffer zones necessary to protect scenery and shoreline along the parkway. The State or local governments must make commitments for one-third of the cost of acquiring such interests in lands.

Gateway National Recreation Area. New York and New Jersey. P.L. 92-592. 10/29/72.

Limitation on Use of Acquisition	The residential enclave at Breezy Point may remain in private ownership indefinitely. However, the Secretary may designate, establish and maintain a buffer zone separating the public use area and the private community.
Construction Standards	Furthermore, all construction within the community must comply with standards set by the Secretary. Additional commercial establishments are permitted only with the express prior approval of the Secretary.
Cooperative Agreement	The Secretary may enter into cooperative agreements with private property owners and the States of New York and New Jersey.
Advisory Commission	The Gateway National Recreation Area Advisory Commission is composed of eleven members appointed by the Secretary from recommendations submitted by State and local representatives. The Commission terminates after ten years.

George Rogers Clark National Historic Park. Indiana. P.L. 89-517. 7/23/66.

Cooperative Agreements	The Secretary is authorized to accept donations of land from the State, and may enter into cooperative agreements with owners of private property for inclusion in the park. Under such agreements the Secretary may assist in the preservation, renewal and interpretation of the property.

Golden Gate National Recreational Area. California. P.L. 93-544. 12/26/72. Amended by P.L. 95-625. 11/10/78. Amended by P.L. 96-607. 12/28/80.

New Construction Limitation	New construction and development within the boundaries under the administrative jurisdiction of a department other than that of the Secretary is prohibited (with the exception of certain specified medical facilities).
Lease of federally owned land	The Secretary may lease land acquired under the Act which was agricultural land prior to its acquisition.
Deferred Payment Schedule	When the landowner agrees, the Secretary may defer payment or schedule payments over a period of ten years and pay interest on the unpaid balance.
Reuse of Program Income	The Secretary may credit proceeds from the rental of space in certain properties to the expenses of maintaining such properties and to related expenses of the vessels and the adjacent piers comprising the National Maritime Museum.
Cooperative Agreements	The Secretary may enter into cooperative agreements with Federal agencies, the State or political subdivisions, for rendering, on a reimbursable basis, of rescue, firefighting, law enforcement and fire preventive assistance.
Easements	The Secretary shall administer lands known as the San Francisco water department property in accordance with the "Grant of Scenic Easement," and the "Grant of Scenic and Recreation Easement" executed between the city and county of San Francisco and the Federal Government.
Advisory Commission	The Golden Gate National Recreation Advisory Commisssion is composed of fifteen members appointed by the Secretary from recommendations submitted by State and local representatives. The Commission terminates after ten years.

Great Dismal Swamp National Wildlife Refuge. North Carolina and Virginia. P.L. 93-402. 8/30/74.

Leasing	The Refuge consists of 49,097+ acres, of which a 40 percent undivided interest was granted to the Federal Government by the Nature Conservancy, and additional lands acquired since enactment. Until the remaining undivided interest is granted to the Federal Government, the Secretary shall lease the remaining interest.

Guadalupe Mountains National Park. Texas. P.L. 89-667. 10/15/66.

Land Exchange	To facilitate the acquisition of privately owned lands in the park by exchange and to avoid the payment of severance costs, the Secretary may acquire 4,667 acres adjacent to, or in the vicinity of the park.

Harper's Ferry National Historical Park. West Virginia. Amendment to the Act of June 30, 1944. P.L. 93-466. 10/24/74.

Limitation on Acquisition	The Secretary may make revisions in the park boundary, but the total acreage may not exceed 2,000 acres.
Limitation on Use of Condemnation	On land where the Secretary has acquired a less than fee interest, a fee simple interest cannot be acquired without the owner's consent.

Hell's Canyon National Recreation Area. Oregon and Idaho. P.L. 94-199. 12/31/75.

Limitation on Condemnation	The Secretary may acquire lands without consent of the owner only if the total acreage of lands so acquired is less than five percent of the total acreage which is privately owned on the date of enactment.

Easements	The five percent acreage limitation does not apply to scenic easements acquired without owner's consent. Scenic easements shall not preclude continuation of farming or other pastoral use exercised by the owner at the date of enactment.
Land Use Standards	The Secretary shall promulgate such rules and regulations as necessary to accomplish the purposes of the Act, including standards for the use and development of privately owned property within the recreation area.

Ice Age National Scientific Reserve. Wisconsin. P.L. 88-655. 10/13/64.

Intergovernmental Cooperation Comprehensive Plan	The Secretary may cooperate with the State and local governments in formulating a comprehensive plan for the protection, preservation and interpretation of the reserve.
State Legislation	When the comprehensive plan is completed and the Secretary is satisfied that State legislation exists for the preservation of the nationally significant features of the reserve, open to the people of the entire Nation, the Secretary shall establish the reserve.
Financial Assistance	The Secretary may grant financial assistance to the State for the acquisition of lands and interests in lands lying within the area designated as the reserve.
Termination of Federal Contributions	Whenever the Secretary determines that appropriate management and protection set down in the comprehensive plan are not being afforded the reserve, or that funds are not being provided on the prescribed matching basis by the State or other non-Federal sources, the Secretary may terminate contributions.

Repayment of Federal Contributions	Payments to the State for the acquisition of land shall be made subject to the understanding and agreement by the State that the conversion, use or disposal, for purposes contrary to the purposes of the Act, as determined by the Secretary, of any land acquired by the State with Federal funds, shall result in the right of the Federal Government to compensation from the State of one-half of the fair market value of the land, exclusive of any improvements, as determined at the time of such conversion, use or disposal.

Independence National Historical Park. Pennsylvania. P.L. 93-477. 10/26/74.

Limitation on Use of Condemnation Zoning	The Secretary's authority to acquire property by condemnation shall be suspended within a specified area provided that the City of Philadelphia shall have in force an applicable valid zoning ordinance approved by the Secretary.

Indiana Dunes National Lakeshore. Indiana. P.L. 89-761. 11/5/66.

Limitation on Use of Condemnation Zoning Regulations and Standards	The condemnation of improved property is disallowed if covered by a zoning ordinance approved by the Secretary. The Secretary must issue regulations specifying standards for the Secretary's approval of zoning ordinances. The Secretary may issue amended regulations at any time. Zoning shall prohibit commercial and industrial use of property.
Advisory Commission	Indiana Dunes National Lakeshore Advisory Commission is composed of seven members, appointed by the Secretary from recommendations submitted by the Governor and local officials. The Commission will terminate ten years after the establishment of the national seashore.

James A. Garfield National Historic Site. P.L. 96-607. 12/28/80.

Acquisition by Donation Only	The Secretary may acquire that portion of the property owned by the Western Reserve Historical Society by donation only.
Cooperative Agreements	The Secretary may enter into an agreement with the Western Reserve Historical Society whereby the Society may operate and maintain the site and charge admission fees.
Reuse of Program Income	Income derived from admission fees may be used to defray the costs of operation and maintenance.

Jean Lafitte National Historical Park. Louisiana. P.L. 95-625. 11/10/78.

Limitation on Use of Acquisition Leaseholds	The National Park Service is to acquire four sites (interests to be acquired may include leaseholds) while other properties associated with the park may remain in private ownership.
Cooperative Agreements Technical and Financial Assistance	The Secretary is authorized to enter into cooperative agreements with owners of the "satellite sites" as well as provide interpretive services for the sites. The Secretary may also provide financial assistance to owners of such properties.
Regulations Land Use Planning	The Secretary will develop guidelines applicable to the use and development of properties within a "park protection zone" in consultation with State and local governments.
Administration	The guidelines developed by the Secretary will be enacted or enforced by the State or the applicable local government.
Advisory Commission	Members of the Delta Region Preservation Commission are appointed by the Secretary, the Governor and the Chairman of the National Endowment for the Arts.

John Day Fossil Beds National Monument. Oregon. P.L. 93-486. 10/26/74.

Limitation on Acquisition	The Secretary cannot acquire fee title to more than 1000 acres of privately owned property except by donation or exchange.

King Range National Conservation Area. California. P.L. 91-476. 10/21/70.

Multiple Use	The Secretary is directed to consolidate and manage the Range under a program of multiple use and sustained yield. The King Range Act allows for a comprehensive, balanced, and coordinated plan of land use, development, and management of the area as well as an inventory and evaluation of the available resources.
Exchange	The Act allows for land exchange in the same county; either party to an exchange may reserve minerals, easements, or rights of use either for the owner's benefit, the benefit of third parties or the benefit of the general public.
"Non-conforming Use"	"Non-conforming land use" will be allowed in the zones of the primary recreation area as long as the uses are compatible with, and do not impair the primary or dominant use of the area. These uses include: Livestock grazing: construction of water development, fencing, holding pens and corrals. Minerals: mining activities are allowed provided the water quality is maintained within acceptable limits and disturbed areas are rehabilitated. Existing vacation cabins: can be maintained at present size, number and character.

Koloko-Honokohau National Historical Park. Hawaii. P.L. 95-625. 11/10/78.

Cooperative Agreements	The Secretary may enter into a coperative management agreement with the State for the management of submerged lands within the authorized park boundary.
Air and Water Quality Controls	The Secretary may also enter into agreements with other governmental entities and private landowners to establish adequate controls on air and water quality and the scenic and esthetic values of surrounding land and water.
Advisory Commission	The Koloko-Honokohau National Historical Advisory Commission consists of nine members appointed by the Secretary from recommendations submitted by State and local representatives.

Lake Chelan National Recreation Area. Washington. P.L. 90-544. 10/2/68.

Limitation on Use of Condemnation	The Secretary may not acquire land or interests within the recreation area without the owner's consent, as long as the lands are devoted to uses compatible with the purposes of the Act.

Lowell National Historical Park. Massachusetts. P.L. 95-290. 6/5/78.

Park and Preservation District	The Act establishes a park, administered by the National Park Service, and an adjacent preservation district administered by the Secretary and the Lowell Historic Preservation Commission.
Lowell Historic Preservation Commission	The Commission is a Federal body composed of fifteen members appointed by the Secretary from recommendations by Federal, State and local officals. The Commission is to draw up a park preservation/management plan for Secretarial approval. The Commission terminates after ten years.

Limitation on Use of Condemnation	Condemnation may be used in acquiring properties specified in the Act, but only after making reasonable efforts to acquire through negotiations and purchase and only after consultation with the Commission and the city council.
Easements	Easements on historic properties may be acquired.
Purchase-Sellback Purchase-Leaseback	The Commission may sell or lease acquired properties subject to deed restrictions.
Cooperative Agreements	The Secretary can make agreements with owners of properties with historic or cultural significance to provide public access.
Technical Assistance	The Secretary may offer technical assistance to any owner of property within the park or the preservation district.
Leasing	Leases may be acquired on private properties within the park.
Grant Assistance	Funds made available to the Lowell Historic Preservation Commission by the Secretary may be granted by the Commission to restore properties or to support park programs and activities.
Reuse of Appropriated Funds	Any revenues or other assets acquired by the Commission by donation, the lease or sale of property or fees for services shall be available to the Commission, without fiscal year limitation, to be used for any function of the Commission authorized under the Act. (This provision was made in sec. 10 of P.L. 96-344, an Act of 9/8/80 amending P.L. 95-290.)
Interagency Coordination	Federal agencies conducting activities directly affecting the park shall consult with, cooperate with, and to the maximum extent practicable, coordinate their activities with the Secretary and the Commission.

Land Use and Zoning

The Lowell Historic Preservation Commission shall draft a management plan which establishes standards and criteria applicable to the construction, preservation and use of all properties within the park and the preservation district.

Revolving Fund

Preservation Restrictions

The Commission may make loans to the Lowell Development and Financial Corporation (established under State law) to enable the corporation to provide low interest loans for the preservation of properties in the park or the preservation district. As loans are repaid, the corporation may make additional loans. (Owners accepting such loans agree to maintain the properties in accordance with the Commission's preservation plan for a stated number of years.)

Lower St. Croix National Scenic Riverway. Minnesota and Wisconsin. P.L. 92-560. 1/25/72.

Federal/State/Local Cooperation

Development of Comprehensive Management Plan

The Secretary and the appropriate agencies of the affected States shall develop a comprehensive master plan which shall include a determination of the lands, waters and interests therein to be acquired, developed and administered by the agencies or political subdivisions.

Limitation on Use of Funds

No funds may be expended until the Secretary has determined that the States have initiated such land acquisition and development proposed pursuant to the development plan.

Minnesota Valley National Wildlife Refuge. Minnesota. P.L. 94-466. 10/8/76.

Limitation on Acquisition

Cooperative Agreements

The Secretary may not acquire lands, waters, or interests in the Black Dog Lake Unit unless compatible with the continued operation of the electric power generation plant; however, the Secretary may negotiate and enter into an agreement for joint or cooperative conservation and management of the unit.

Revenue Sharing	Any payment of money to counties in which units of the refuge are located will be distributed by the counties to the municipalities and townships on the same pro rata basis as used in the distribution of real estate taxes.

Minute Man National Historical Park. Massachusetts. P.L. 91-548. 9/21/59. Amended by P.L. 91-548. 12/14/70.

Cooperative Agreements	To provide for the preservation and interpretation of historic sites, structures and properties along the historic route, the Secretary is authorized to enter into cooperative agreements with the Commonwealth of Massachusetts, political subdivisions, corporations, associations, or individuals to erect and maintain tablets or markers and to provide for the preservation of historic American sites, buildings, objects and antiquities of national significance.
Limitation on Acquisition	In adjusting the boundaries of the park to accommodate the relocation of a State highway, the Secretary may acquire additional acreage, but only if such acquisition can be accomplished without cost for land acquisition.
Advisory Commission	The Secretary is authorized to appoint an advisory commission of five members from recommendations submitted by State and local representatives.

Nez Perce National Historical Park. Idaho. P.L. 89-19. 5/15/65.

Limitation on Use of Acquisition and Easements	The Secretary cannot purchase more than 1,500 acres in fee and no more than 1,500 in scenic easements.

North Cascades National Park. Washington. P.L. 90-544. 10/2/68.

Limitation on Use of Condemnation	The Secretary may not acquire land or interests within the recreation area without the owner's consent, as long as the lands are devoted to uses compatible with the purposes of the Act.

Oregon Dunes National Recreational Area. Oregon. P.L. 92-260. 3/23/72.

Limitation on Use of Condemnation	Certain classes of property cannot be acquired without owner's consent if the Secretary determines the property is compatible with the purposes of the Act (e.g. timberlands under sustained yield management or property used for private non-commercial recreational purposes).
Advisory Commission	The Act establishes an Advisory Commission for the Oregon Dunes National Recreation Area. The Commission consists of no more than fifteen members appointed by the Secretary from recommendations submitted by State and local representatives.

Ozark National Scenic Riverways. Missouri. P.L. 88-492. 8/27/64.

Limitation on Use of Fee Acquisition	Federal land acquisition is restricted to 65,000 acres of land in private ownership and no lands within two miles of the 1964 boundaries of the municipalities of Emence and Van Buren, Missouri can be designated as being in the riverways.
Easements	Scenic easements may be acquired, but only with the consent of the owner.

Land Use Planning	The Secretary is authorized to cooperate with the State, political subdivisions and other Federal agencies in formulating comprehensive land use and development programs, and for the preservation and enhancement of the landscape.
Advisory Commission	The Ozark National Scenic Riverways Commission consists of seven members appointed by the Secretary from recommendations submitted by State and local representatives. The Commission terminates after ten years.

Pictured Rocks National Lakeshore. Michigan. P.L. 89-668. 10/15/66.

Limitation on Use of Condemnation	The Secretary is prohibited from acquiring any improved property within the inland buffer zone as well as property used for growing or harvesting of timber under a selective cutting and management program. In addition, property used for commercial purposes cannot be condemned if the purposes are in furtherance of the Act.
Advisory Commission	The Pictured Rocks National Lakeshore Advisory Commission consists of five members appointed by the Secretary from recommendations submitted by State and local representatives. The Commission terminates after ten years.

Pinelands National Reserve. New Jersey. P.L. 95-625. 11/10/78.

Intergovernmental Cooperation	The Act recognizes the need for a "new program which combines the capabilities and resources of the local, State and Federal governments and the private sector and provides an alternative to large-scale direct Federal acquisition and management."

Financial and Technical Assistance for Planning State and Local Land Use Planning Zoning Easements Purchase-Sellback Purchase-Leaseback	The Act authorizes Federal financial assistance for 75 percent of the costs associated with the development of a comprehensive plan for land use management of the reserve. The plan must consider land development, agriculture, and other beneficial economic uses as well as important environmental factors. It must also consider a variety of land and water protection and management techniques, including zoning and regulation derived from State and local police powers, development and use standards and permit systems, acquisition of conservation easements, public access agreements with private landowners, purchase of land for resale or lease-back, and fee acquisition of public recreation sites and ecologically sensitive areas. The Secretary retains the authority to approve or disapprove the management plan and future revisions of the plan.
Grant Assistance for Emergency Acquisition	During the development of the plan, Federal grant assistance can be provided for 75 percent of the costs of acquiring land and water with critical ecological values, in immediate danger of alteration or destruction.
State Planning Entity Review of Applications for Federal Assistance	During the development of the plan, in order to avoid adverse Federally approved or assisted impacts, provisions are made for the State's planning entity for the reserve to review all applications for Federal assistance within a designated Federal Project Review Area.
Grants for Acquisition	After plan approval by the Secretary, Federal financial assistance can be provided for 75 percent of the costs of land acquisition which is consistent with the provisions of the management plan.

State Commission	The State's planning entity (the New Jersey Pinelands Commission) is composed of fifteen members: one appointed by the Secretary, one appointed by the governing bodies of each of the seven counties in the reserve, and seven appointed by the Governor.
Implementation and Monitoring	Implementation of the plan is the responsibility of the State and local governments, with oversight by the Governor. The Secretary has a responsibility for periodically monitoring implementation of the plan.

Piscataway Park. Maryland. P.L. 87-362. 10/4/61.

Easements	The Secretary may accept donations of scenic easements as well as acquire by other appropriate means scenic easements in the area when in his judgement such action is necessary in order to ensure uniform application of scenic control. He may
Cooperative Agreements	also enter into cooperative agreements and covenants to achieve scenic preservation
Zoning	through zoning and other means as feasible.

Point Reyes National Seashore. California. P.L. 87-657. 9/13/62.

Limitation on Acquisition	No parcel of more than 500 acres (within a 26,000-acre zone specified as a "pastoral zone") can be acquired without consent of owner as long as it remains in its natural state or is used for ranching or dairying.
Exchange	The Secretary may accept title to any non-Federal property located within the area and convey to the grantor any federally owned property under the jurisdiction of the Secretary within California and adjacent States.
Lease of federally Owned Land	The Secretary may lease land acquired under the Act which was agricultural land prior to its acquisition.

Deferred Payment Schedule	When the landowner agrees, the Secretary may defer payment or schedule payments over a period of ten years and pay interest on the unpaid balance.
Cooperation	The Secretary shall cooperate with the Bolinas Public Utilities District to protect and enhance the watershed values within the Seashore.
Advisory Commission	The Point Reyes National Seashore Advisory Commission consists of fifteen members appointed by the Secretary from recommendations submitted by State and local representatives. The Commission also advises the National Park Service on the Golden Gate National Recreation Area.

Puukohola Heiau National Historical Site. Hawaii. P.L. 92-388. 8/17/72.

Limitation on Acquisition	The total acreage of the site cannot exceed 100 acres; however, notwithstanding acreage limitation, the Secretary can acquire additional lands as necessary to relocate portions of State and county roads within the boundary of the site.

Redwood National Park. California. P.L. 90-545. 10/2/68.

Cooperative Agreements	The Secretary is authorized to acquire interests in land from, and to enter into contracts and cooperative agreements with, the landowners on the periphery of the park and on watershed tributaries to streams within the park to assure that the consequences of forestry management, timbering, land use and soil conservation practices will not adversely affect the timber, soil and streams within the Park.

Ross Lake National Recreation Area. Washington. P.L. 90-544. 10/2/68.

Limitation on Use of Condemnation	The Secretary may not acquire land or interests within the recreation area without owner's consent, as long as the lands are devoted to uses compatible with purposes of the Act.

San Antonio Missions National Historical Park. Texas. P.L. 95-629. 11/10/78.

Cooperative Agreements	The Secretary is authorized to enter into cooperative agreements with the owners of historic properties within the park. Such cooperative agreements shall provide that the owners will hold and preserve the historic properties and grant public access. In return, the Secretary may rehabilitate such structures on real property not in Federal ownership and may operate programs relating to the facilities.
Advisory Commission	The San Antonio Missions Advisory Commission consists of eleven members appointed by the Secretary from recommendations submitted by State and local representatives. The Commission terminates after ten years. (The number of members was changed from seven to eleven by P.L. 96-344, 9/8/80.)

Santa Monica Mountains National Recreation Area. California. P.L. 95-625. 11/10/78.

Recreation Area and Santa Monica Mountains Zone	The Act establishes the Santa Monica Mountains National Recreation Area, administered by the Federal Government, and the Santa Monica Mountains Zone, to be protected by State and local governments.
Limitation on Acquisition	The Secretary shall not acquire fee title to improved properties unless such lands are being used, or are threatened with uses, which are detrimental to the purposes of the recreation area or unless each acquisition is necessary to fulfill the purposes of the Act.

Easements	The Secretary may acquire scenic easements on improved property.
Land Transfer	The General Services Administration is directed to transfer a site to the Secretary, but the County of Los Angeles shall be permitted to use the site and facilities to operate a fire suppression and training facility.
Cooperative Agreements	The Secretary may enter into cooperative agreements with the State or a political subdivision for rescue, firefighting and law enforcement services.
Comprehensive Land Use Planning	The Secretary shall request the Santa Monica Mountains Comprehensive Planning Commission to submit a comprehensive plan for the Santa Monica Mountains Zone to identify uses which would not have an adverse impact on the recreation area. The plan shall also put forward a specific minimum land acquisition program of fee and less than fee acquisition of strategic and critical sites in the Santa Monica Mountains Zone. These sites are not to be acquired by the Federal government, but are to be protected through the complementary use of State and local authority to regulate the use of lands and waters to the fullest extent practicable.
Federal Agency Coordination	The head of any Federal agency having any jurisdiction over a proposed Federal or federally assisted undertaking in the Santa Monica Mountains Zone, or having authority to license or permit any undertaking, shall give the Secretary an opportunity to comment.
Financial Assistance Grants	Following approval of the comprehensive plan, the Secretary shall provide grants to the State, and through the State to local governmental bodies for acquisition.

Retirement of Bonded Indebtedness

The Secretary shall provide funds to retire bonded indebtedness for water and sewer and other utilities already incurred by property owners which, if left outstanding, would contribute to development inconsistent with the approved plan.

Advisory Commission

The Act establishes the Santa Monica Mountains National Recreation Area Advisory Commission for ten years. It consists of nine members appointed by the Governor, local governments and the Secretary.

Sawtooth National Recreation Area. Idaho. P.L. 92-400. 8/22/72.

Limitation on Acquisition

Acquisition of lands or interests therein for access to and utilization of public property, and for recreation and for other facilities, shall not exceed five percent of the total acreage of all private property within the recreation area as of the effective date of the Act.

Land Use Regulation

Limitation on Condemnation

The Secretary of Agriculture shall make and publish regulations setting standards for the use, subdivision, and development of privately owned property to further the purposes of the Act. After the regulations are published, the Secretary cannot condemn any private lands unless the use is incompatible with the regulations or unless needed for access or development (and then such acquisition by condemnation is subject to the five percent limitation). Private lands in compliance with standards may remain in private hands.

Cooperation

The Secretary may cooperate with other Federal agencies, with State and local public agencies and with private individuals and agencies in the development and operation of facilities and services in the area.

Sleeping Bear Dunes National Lakeshore. Michigan. P.L. 93-477. 10/21/70.

Limitation on Acquisition	The Secretary is directed to give full recognition, in developing the lakeshore, to protecting the private properties for the enjoyment of the owners.
Limitation on Use of Condemnation Zoning Certificate of Suspension of Condemnation Authority	No improved property within the area designated for inclusion can be acquired by the Secretary by condemnation as long as the affected county or township has in force a valid zoning bylaw approved by the Secretary. If there is no zoning bylaw, the Secretary is prohibited from acquiring the property by condemnation if the owner notifies the Secretary in writing of the owner's agreement to use the property in a manner consistent with the Act. The Secretary shall furnish to any interested party a certificate that the Secretary's authority to condemn is suspended with respect to the specified property.
Intergovernmental Cooperation Land Use Planning	Reliance is placed on cooperation between Federal, State and local governments to apply sound principles of land use planning and zoning.
Technical Asistance	The National Park Service must provide technical assistance on land regulations.
Financial Assistance	The Secretary is authorized to provide payments to counties for aid in land regulation.
Management Plan	The Secretary must prepare and implement a land and water use management plan.
Advisory Commission	The Sleeping Bear Dunes National Lakeshore Advisory Commission is composed of ten members appointed by the Secretary from recommendations submitted by State and local representatives. The Commission terminates after ten years.

Theodore Roosevelt Inaugural National Historic Site (Ansley Wilcox House). New York. P.L. 89-708. 11/2/66. Amended by P.L. 96-607. 12/28/80.

Donations Requirement	This National Historic Site cannot be established by the Secretary, nor can funds for the acquisition and restoration of the property be spent, until sufficient donated funds or services have been received to complete the restoration and to operate the property for public benefit.
Disposal Clause	(The Secretary must dispose of the property if at any time following the acquisition donated funds or services will not be sufficient to complete the restoration or to continue the operation and maintenance of the property.) (In carrying out its responsibilities under the Act, the National Park Service entered into a cooperative agreement for the restoration and administration of this site with the Theodore Roosevelt Inaugural Site Foundation, Inc.)
Acquisition	The 12/28/80 amendment to the authorizing Act revises the sections containing the provisions described above. The amendment states that the Secretary shall acquire the Ansley Wilcox House.
Cooperative Agreements	The Secretary shall enter into cooperative agreements with the Theodore Roosevelt Inaugural Site Foundation or other qualified public or private entities for the operation, maintenance, management, development and interpretation of the site.
Limitation on Operating Expenses	The Department of the Interior share in any fiscal year of the annual operating costs of the site shall not exceed two-thirds.

Upper Delaware Wild and Scenic River. New York and Pennsylvania. P.L. 95-625. 11/10/78.

Comprehensive Management Plan Technical Assistance	The Secretary shall establish guidelines for land and water use control measures to be developed and implemented by State and local officials, and by the Delaware River Basin Commission. These guidelines will be used by the Secretary in developing a management plan in cooperation with the Commission, the Advisory Council, the States and their political subdivisions. The Secretary will provide technical assistance to the States and their political subdivisions to implement programs compatible with the management plan.
Limitation on Acquisition Easements	The Secretary may not acquire more than 450 acres--unless the management plan calls for more, in which case up to 1,000 acres may be acquired. Prior to acquisition the Secretary shall first attempt to acquire easements or restrictive covenants or other agreements with owners.
Review of Local Land Use Laws	The Secretary shall review all relevant local plans, laws and ordinances to determine conformance with the management plan. If the Secretary finds that such laws or plans are not in conformance with the management plan, the Secretary may acquire land in excess of the acreage limitation stated above.
Advisory Commission	The Upper Delaware Citizens Advisory Council is composed of 17 members appointed by the Secretary and the Governors of the affected States.

Vicksburg National Military Park. Mississippi. P.L. 88-37. 6/4/63.

Quitclaim	The Secretary is authorized to quitclaim to the City of Vicksburg, Mississippi, approximately 154 acres of land in exchange for the City's agreeing to place and maintain roads, and upon agreement of the City to maintain the park-like character of the area.
Reversion Clause	The land covered by the agreement shall revert to the Federal Government if its parklike character is not maintained. A similar agreement is authorized with Warren County.

Whiskeytown-Shasta-Trinity National Recreation Area. California. P.L. 89-336. 11/8/65.

Coordination	The Whiskeytown unit is to be administered by the Secretary of Interior; The Shasta and Clair Engle-Lewistown units are to be administered by the Secretary of Agriculture. The two Secretaries shall coordinate their planning and administration of the respective units.
Limitation on Use of Condemnation Zoning	Privately owned improved property or interests therein may not be acquired without the owner's consent as long as an appropriate local zoning agency shall have in force a duly adopted, valid ordinance approved by the Secretary.
Joint Regulations and Standards	Prior to the approval of any zoning ordinance, the Secretaries shall jointly issue regulations specifying standards for such ordinances.

Certificate of Suspension of Condemnation Authority	Each Secretary shall furnish to any interested party upon request a certificate indicating that the authority to acquire by condemnation has been suspended with respect to the specified property.
Leasing and Permits	Leases may be let or permits issued allowing the removal of mineral resources.

Women's Rights National Historical Park. New York P.L. 96-607. 12/28/80.

Limitation on Acquisition	The Secretary may not acquire fee simple title to three of the nine sites initially designated as comprising the park.
Cooperative Agreements	The Secretary is authorized to enter into cooperative agreements with owners by which the Secretary may mark, interpret, improve, restore and provide technical assistance with respect to the preservation and interpretation of such properties.
Intergovernmental Cooperation	The Secretary shall encourage State and local governmental agencies to plan for the preservation and rehabilitation of sites within the park.
Technical and Financial Assistance	The Secretary may provide technical and financial assistance to such agencies in the development and implementation of such plans (such aid may not exceed 50 percent of the cost).
Advisory Commission	The Women's Rights National Historical Park Advisory Commission consists of eleven members appointed by the Secretary from recommendations submitted by State and local representatives. The Commission terminates after ten years.

Part III

Generic Legislation

Federal Land Policy and Management Act. P.L. 94-579. 10/21/76.

Purpose	The Act governs the acquisition, management and disposal of public lands. Principal alternatives-to-fee acquisition techniques incorporated into the Act are outlined below. The Act applies to the public lands managed by the Bureau of Land Management and to National Forests.
Inventory	The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values.
Study for Wilderness Designation	The Secretary shall study roadless areas of 5,000 acres or more and roadless islands of the public lands identified during the inventory and make recommendations to the President as to the suitability of each area for preservation as wilderness.
Land Use Planning	The Secretary shall develop land use plans for the public lands. In developing such plans the Secretary shall provide for meaningful involvement of State and local governmental officials.
Intergovernmental Cooperation	
Limitation on Use Condemnation	The Secretary may exercise the power of eminent domain with respect to the public lands only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose.

Exchanges	Exchanges of public lands or interests therein (or of lands in the National Forest System) for non-Federal lands are authorized provided such lands are located in the same State.
Equalization Payments	Equalization payments up to 25 percent of the total value of the lands or interests transferred out of Federal ownership may be made, but the Secretary shall try to reduce the amount of money paid to as small an amount as possible.
Reserved Interest	All conveyances of title issued by the Secretary, except those involving land exchanges, shall reserve all mineral rights in such lands to the United States, unless the reservation of the mineral rights interferes with or precludes appropriate non-mineral development of the land and that such development is a more beneficial use of the land than mineral development.
Intergovernmental Coordination Zoning Regulation	Before offering for sale or otherwise conveying public lands, the Secretary shall notify the State and appropriate local government in order to afford the appropriate body the opportunity to zone or otherwise regulate such lands prior to their conveyance.
Conveyances to States	The Secretary may convey to States or their political subdivisions unsurveyed islands determined by the Secretary to be public lands; the Secretary may also convey lands other than islands erroneously or fraudulently omitted from the original survey.

Regulation, Easements, Leases, Permits, Licenses	In managing the public lands, the Secretary shall regulate through easements, permits, leases, licenses, published rules or other instruments the use, occupancy, and development of the public lands.
Working Capital Fund	The Act establishes a working capital fund for the management of the public lands. The fund is to be available without fiscal year limitation for expenses necessary for furnishing supplies and equipment in support of Bureau of Land Management programs.
Cooperative Agreements	The Secretary may enter into contracts and cooperative agreements involving public lands.
Contributions	The Secretary may accept contributions or donations of money, services and property for the management, protection, development and acquisition and conveying of public lands.
Advisory Commissions	The Secretary is authorized to establish advisory commissions of ten to fifteen members representative of the major citizens' interest concerning the problems relating to land use planning or management of the public lands within the area.
Recordable Disclaimers of Interest in Land	After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest in any lands in any form suitable for recordation.
Loans	The Secretary is authorized to make loans to States and their political subdivisions to relieve social or economic impacts occasioned by the development of minerals leased in the States.

Grazing Leases and Permits	Permits or leases for domestic livestock grazing on public lands shall ordinarily be for a term of ten years.
Grazing Advisory Boards	For each Bureau district office and National Forest headquarters office in the 11 contiguous Western States having jurisdiction over more than 500,000 acres subject to commercial grazing, the respective Secretary shall establish, upon the petition of a simple majority of the lessees and permittees, a grazing advisory board of not more than 15 members.
Rights-of-Way, Review of Plans	The Secretary may grant rights-of-way over, under, or through public lands, but may first require the applicant to submit plans related to the use of the right-of-way.
Cost-share Road Authorization	The Secretary is authorized to share in the costs of providing roads necessary for access to timber for harvesting, provided such roads are of a higher standard than that needed in the harvesting and renewing of timber.

Land and Water Conservation Fund Act. P.L. 88-578. As Amended Through P.L. 95-625. 11/10/78.

Permits	Recreation permits for special uses may be issued in accordance with procedures and at fees established by the agency involved.
Contracts	The head of any Federal agency may contract with any public or private entity to provide visitor reservation services.
Financial Assistance To States	The Secretary is authorized to provide financial assistance to the states for (1)outdoor recreation planning, (2) acquisition of land, waters, or interests in land or waters or (3)development.

Acquisition of Interests in Land and Waters	Money appropriated from the fund may be used for the acquisition of land, waters, or interests in land or waters.
Limitation on Exchanges	In exercising authority to make boundary adjustments, the Secretary may not alienate property administered as part of the national park system in order to acquire lands by exchange.
Intergovernmental Cooperation	Prior to making boundary changes or acquiring land adjacent to an area, the Secretary shall consult with the governing body of the jurisdiction having primary taxing authority over the land or interest to be acquired as to the impacts of such proposed action.
Options to Acquire	The Secretary may enter into contracts for options to acquire lands, waters or interests therein within the exterior boundaries of any area authorized for inclusion in the national park system.

National Park Foundation Establishment. P.L. 90-209. 12/18/67.

Purpose	The purpose of the Act is to encourage private gifts of real and personal property to further the conservation of National, scenic, historic, scientific, educational, inspirational or recreational resources.
Membership	The Foundation consists of a Board comprised of the Secretary of Interior, the Director of the National Park Service, ex officio, and no less than six private citizens of the United States appointed by the Secretary for a six year term.

Gifts, Bequests, etc.	The Foundation is authorized to accept, receive, solicit, hold, administer and use any gifts, devises, or bequests, either absolutely or in trust of real or personal property. Any interest in real property includes easements or other rights for preservation, conservation, protection or enhancement by and for the public of natural, scenic, historic, scientific, educational, inspirational, or recreational resources.
Restriction	The Foundation may not accept a gift, devise, or bequest which entails any expenditure other than from the resources of the Foundation.
Repeal	The Foundation succeeds to all right, title and interest of the National Park Trust Fund Board which is abolished on the date on this Act.

National Trails System Act. P.L. 90-543. 10/2/68.

Cooperative Agreements	The Secretary of the Interior or the Secretary of Agriculture may enter into cooperative agreements with States or political subdivisions, landowners, private organizations or individuals to operate, develop and maintain a portion of the trail within or outside of a federally administered area.
Limitation on Use of Condemnation	Not more than 25 acres in any mile may be acquired without owner's consent (Condemnation is prohibited with respect to all acquisition of lands or interest in lands for purposes of the Pacific Crest Trail.)

Reserved Interest	Whenever the Secretary of the Interior makes any conveyance of land under the public land laws, he may reserve a right-of-way for trails.
Federal Cooperation	Federal agencies having jurisdiction over or information concerning the use, abandonment or disposition of roadways, utility rights-of-way, or other properties suitable for expanding or improving the national trails system shall cooperate for such a purpose with the Secretary of the Interior or the Secretary of Agriculture.
Advisory Commission	The Secretary of the Interior shall establish an advisory commission for the Appalachian National Scenic Trail, and the Secretary of Agriculture shall establish an advisory commission for the Pacific Crest National Scenic Trail. The commissions shall not exceed 35 members, appointed by the appropriate Secrutary, representing Federal, State and local agencies.

Roads and Trails for National Forests. P.L. 88-657. 10/13/64.

Easements and Rights-of-Way	The Secretary can grant easements (permanent and temporary) for road rights-of-way, but he can cancel or terminate after a five year period of nonuse.

Wild and Scenic Rivers Act. P.L. 90-542. 10/2/68.

Limitation on Acquisition	The Secretary may not acquire fee title to an average of more than 100 acres per mile on both sides of the river. Lands owned by Indian Tribes or political subdivisions of a State may not be acquired without the consent of the appropriate governing body as long as the tribe or political subdivision is following a plan for management and protection which the Secretary finds protects the land in accordance with the Act.

Limitation on Use of Condemnation Easements Local Land Use Regulations Zoning	If 50 percent or more of the acreage within the river area is owned by the Federal Government, State or political subdivision, the Secretary cannot acquire fee title to lands by condemnation; however, there are no restrictions on the use of condemnation for scenic or access easements. Condemnation is prohibited within incorporated communities with zoning ordinances that conform to the purposes of the Act as determined by the Secretary.
Purchase-leaseback	The Secretary may lease land acquired with protective covenants (but it must be first offered to the former owner).

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STATEMENT OF JACK HAUPTMAN, NATIONAL PARK SERVICE

Mr. **Hauptman**. Thank you, Ric. I will not get into why we did the case studies. We covered that, but based on those past efforts, in August of last year the Director of the National Park Service asked us to look at eight units of the national park system and to respond to the concerns that Ric has expressed. The eight areas that we looked at were the Appalachian National Trail, Chattahoochee River National Recreation Area, Chaco Culture National Historical Park, Channel Islands National Park, Kaloko/Honokohau National Historical Park, Biscayne National Park, Grand Teton National Park, and Jean LaFitte National Historical Park.

These eight areas represented over $300 million of unexpended authorizations against the Federal side of the Land and Water Conservation Fund. The areas were selected because they represented potential significant dollar savings. Each of the studies could be done in a timely manner, they represent a good cross-section of the problems involved, and we thought they offered a good test of the various tools that we wanted to look at, so therefore, in September 1981, these eight studies got started.

Essentially the study members included the superintendent of each area, land acquisition staff members, planning staff members, and those planners who were interested and knowledgeable and committed to the use of alternatives to direct fee simple acquisition for the preservation of parklands.

The basic instructions to the planning teams were simple. The first thing they were expected to do was review the legislative history as the intent of Congress was paramount in the conduct of the studies.

The study teams were told to explore all alternatives for protecting the natural resources there. The study members were instructed not to be constrained by any real or imagined concerns about political feasibility. During the study effort all ongoing programs were to continue and the implementation of any study recommendation would be through the normal planning and public participation process.

I guess the final and continual direction to the study teams was that the land protection strategies that they developed should be carefully crafted to specify resources of national interest as well as the local, political, social, cultural, and economic conditions that the study team found in the particular area.

Mr. Chairman, just to review quickly some of the general findings of the study, they are: Acquisition of land or interest in land alone is often not the only effective approach to assure protection of park resources and threats to land within and outside the park boundaries, make Federal, State, and local regulatory authorities an important element in a park protection strategy.

Acquisition of fee or less than fee interest is an essential part of a park protection strategy. Donations, exchange, or purchase with State, local, or private funds can provide a viable alternative to direct Federal purchase of land or interest in land.

Planners, realty specialists, and park managers with the national park system are frequently unfamiliar with the full range of land protection techniques and how to use them to save lands. Many land managers do not currently have the expertise, staff, funds, or time to participate fully in new approaches to park protection. There are currently no incentives for national park managers to try new approaches to protecting their resources, and efforts to be innovative are often perceived to have very significant risks in an individual's career.

Most areas need a better base of information about their natural and cultural resources to defend and define compatible and incompatible uses.

The implementation of case study recommendations may produce substantial savings in management as well as acquisition, and they also may result in a higher quality of resource protection by improving cooperative relationships with State and local governments, other Federal agencies and the private sector.

Thank you.

Mr. DAVIDGE. I would like to ask Brian O'Neill at this time to give you a thumbnail sketch of the Channel Islands case study and Brian can focus in on the particular problems and the solutions that were identified in the case study.

STATEMENT OF BRIAN O'NEILL, NATIONAL PARK SERVICE

Mr. O'NEILL. Thank you, Ric. I feel rather odd sitting back here and trying to talk and get fully involved with the audience.

Channel Islands represents one of the new national parks in the system where there are significant land acquisition needs. It was established in 1980 as an expansion of a national monument. It had been established back in 1938.

Just to give you a quick thumbnail sketch, we are dealing with basically five islands in the chain within the park, approximately 125,000 acres of fast-lands, but 250,000 acres included within the total boundary. Now in looking at this we had to decide very quickly what the major resource issues were that needed to be dealt with. They were quickly synthesized as basically we had a very critical resource in the submerged lands around the islands and how they could be controlled and protected.

These were resources under the jurisdiction of the State of California.

Second, we recognized that we had a number of other Federal agencies who were carrying on programs and had other interests on the islands, and there was a need to develop cooperative work efforts and agreements with those agencies to assure that protection actions were carried out.

Third, and probably most important, we concentrated on significant private holdings that still were in the private estate totaling approximately 114,000 acres. Now the Channel Islands are a National Park, a State ecological preserve, and a national marine sanctuary. Thus there is a complex set of factors that come into play here.

Now I would like to reemphasize, as Ric and Jack had mentioned, that when we first got involved in looking at Channel Islands there were a lot of doom sayers who indicated that everything had been thought of in terms of an easy solution to the problem, and that possibly the only appropriate route to go was the appropriation process. I think if there was anything that we as a team learned, it is that you need to ask a lot of questions and repeat those questions frequently. I think the very important three-step process previously outlined, starting with the identification of the resource and visitor use objectives, is essential.

I think the real creative process begins when you have decided on the level of the estate that is to be acquired, and try to find alternative mechanisms that may be applied to acquire that necessary estate.

Being from California and having gone through proposition 13, I was quick to realize that a lot of people and a lot of problems were created by proposition 13. But if it did nothing else, it reawakened the creative spirit and the need to really dig in and find new approaches and ways of doing things. In many respects we were faced with the same thing at this point in looking at the resource problems at Channel Islands. Thus, first we looked to the Federal Government which has assets available to solve a problem, money being only one of them. We had to look at the other things that the Federal Government had to offer as a potential solution to acquiring the level of estate that had been identified.

Looking at the Channel Islands, we had to refrain from being constrained with the existing policy or with existing legislation. The first thing you see at Channel Islands is the oil platforms that sit in the Santa Barbara Channel, so the first question that should go through one's mind is, "Is there a way to take advantage of that in terms of solving the problem that needed to be dealt with?" Certainly anyone that is halfway intelligent will say, "Well, maybe there is a way to use the benefits of that to directly benefit the problem at Channel Islands." So one of the alternative solutions that we had identified would be an exchange whereby the bidder of an offshore Continental oil lease would pay for a portion of that bidding privilege through the purchase of lands at Channel Islands, so that we are not offering any particular proposal in legislation at this time, but it was something that surfaced as a possibility to solve that particular problem that made sense at Channel Islands.

Then we began to look and realize that in order to solve a problem one needs to know what the sympathies, the motivations, the needs are of the individual landowners involved and how you can take advantage of those to solve a particular problem. Now when we were looking at the Gherini property which is on the eastern end of Santa Cruz Island, a 6,200-acre tract, a family who had been on the islands since the early 1900's, they were indeed very interested in continuing a presence on the island, so we looked at it as a potential solution that the Government can in addition to offering a life or term estate and use occupancy, we also have the advantage of looking at offering a reservation of concession rights so that particular concept seemed to make sense for that particular area.

Now we found out very quickly, too, that there may be several tax incentives that were absolutely crucial in order to get a favorable environment to solve that problem. Now both of the families that were the principal owners on Santa Rosa and Santa Cruz Islands did have a tax problem, and it became quite obvious that an incentive to help create a solution to that problem may define itself in some tax relief, so there had been a couple of specific proposals that had developed out of that, one dealing with an estate tax relief solution, the other dealing with being able to eliminate from the gross income estate the donation or the purchase, the sale of the property that was involved.

Let me just summarize quickly because, unfortunately, there is not time to get into it, that there are a lot of lessons that were learned. I think the most important to us as a team is that it has to be a totally creative process that defines itself specifically to the area that is involved, and in each area there are alternative ways of dealing with the problem if there is persistence in asking questions and exploring what particular little possibilities present themselves for that individual area.

Mr. DAVIDGE. Thank you, Brian. Bob, you've got 3 minutes.

Mr. MCINTOSH. I'll just sum it up the way the superintendent said in Chattahoochee—this ain't no Yellowstone!

STATEMENT OF ROBERT McINTOSH, NATIONAL PARK SERVICE

Mr. MCINTOSH. Quickly, the Chattahoochee River National Recreation Area was authorized in 1978 basically to preserve and protect the natural scenic, recreation, historic, and other values of a 48-mile segment of the extremely scenic river that I think has made national importance because of its proximity to the Atlanta metropolitan region. In fact, it runs down the middle of that metropolitan area.

The authority was basically limited to acquisition and a management program by the National Park Service, but interestingly, the legislative history speaks at great length and in great detail to the partnership that should be created between the Federal Government through the National Park Service, the State, five counties, and the city of Atlanta.

To date, the efforts on the Chattahoochee have included protection for some 3,000 acres of land by the National Park Service. The Park Service under cooperative agreements manages 700 acres owned by the State, and there are some 2,100 acres left within the boundary yet to be protected.

What is interesting here is the partnership is yet to get off the ground. In fact, once the NRA was authorized, the State and local governments in many respects backed away from the issue, leaving the Park Service with a management responsibility to an acquisition program to try to protect those resource values essential to recreation and natural experience. The case study came at this point in the middle of the general management plan process for the NRA, and the first effort was to identify the resource values that were of some importance. Water quality and quantity ranked No. 1. Scenic environment ranked No. 2, and followed by things like fisheries and historic resource and so on down the line.

We looked at the visitor experience—floating in the river, fishing along the river, the water contact activities—and putting the two together we quickly realized that alone, the Park Service did not have the capabilities through acquisition in any way, shape, or form to protect the water quality and quantity and to protect the scenic environment. The importance of partnership was then obviously refocused and major efforts, I am pleased to report are underway. The Park Service with the State of Georgia and the city of Atlanta is trying to bring that into focus or into performance as it was normally envisioned in 1978.

We further looked at a planning process or decisionmaking process for the selection of land protection techniques; fee, less than fee, regulatory means, and so on. We took five areas of the unit within the authorized boundary of the NRA and developed a screening process that would take the areas as it was defined in terms of the resource values and visitor experience and run them through a screen. The screen tested the land in terms of the effectiveness of State and local laws and regulations to protect its quality, the capability of the particular tool to provide for the visitor experience, the capability of the particular tool to protect the resource and allow management practices. In addition, by using the matrix analysis we were able to identify for a given area those values that obviously needed to be protected in fee, or less than fee in some areas. By using the regulatory technique, five of the areas were set up as models in which we could overlay a given nature of park interests, be it for public use or not, for scenic protection or not, the type of tool that would be most appropriate in those areas which were identified accordingly.

Mr. **Davidge**. You have about 1 minute to sum up. I think we will get into some of the other issues on the case study with the panel. Don?

Mr. **Humphrey**. Thank you. I hope that my time won't all be used up. I see I have a little time left.

STATEMENT OF DON HUMPHREY, NATIONAL PARK SERVICE

Mr. **Humphrey**. The eight reports that have been prepared are here today, and you all have an opportunity to look at them and make your review.

The question before us is where do we go from here? And we do plan to institutionalize the land protection plans, that is, to say they will become part of the general management plan for each park. This doesn't necessarily mean they will be prepared at the same time the general management plan is prepared, but they will be consistent with it, and they will be reflective of the goals of the general management plan which relate to resource protection of the parks.

I also want to point out that we are going to make an effort starting right now to begin to train park staff and those who will be preparing the land protection plans in the use of these tools. It is one thing to know about the tool. It is another thing to learn the specific techniques that will make that tool applicable in a given park, so a lot of time and effort is going to be spent on that.

Then second, we are preparing a set of instructions which will be used to develop the land protection plans. These instructions will relate back to the purpose of the park, to the legal constraints that have been placed on each particular park—these vary from park to park. They will then require that we analyze the resources to be protected, and I mean on a tract-by-tract basis. We will map and describe the private lands that exist within the boundaries of the park, and we will discuss the types of use that are commensurate with their remaining in private hands, if that is possible, or if the lands need to be acquired we will explain why they should be acquired and what interest is needed for what purpose.

We will look at acquisition up to this point in time and explain what has been done and what remains to be done. We will look at the social and the cultural impact of acquiring land upon those who live within the boundaries of the park, and then, of course, we will come up with a set of alternatives for protection of parklands which will include the impacts on the resource, the use of the park, the costs, and the impacts on the land, and landowners, and finally, to sum up, we will then recommend a course of action which we believe will meet the purpose of the park, meet the goals and objectives of that park, be cost effective, and have the least adverse impact on those who live within the boundaries of the park.

Thank you.

Mr. **Davidge**. Mr. Chairman, I would point out again the case studies are transitional steps in the implementation of this policy and should not be viewed as a definitive statement of policy. We learned much in the process. We continue to learn, and certainly through the institutionalization of this policy through the four agencies it affects we will continue to learn more.

Thank you very much.

Mr. NOONAN. Thank you and your group for your comments. I note the charts on the wall. Do they relate to this presentation?

Mr. DAVIDGE. They are a means to explain the development policy; a before and after scenario if you will. Congress authorizes a number of areas for protection, appropriates very little dollars to implement that protection, and if you apply those few dollars to a few acres, given the cost of dollars per acre, you end up protecting very little resource, even if all authorizations were appropriated. Using the alternative policy that we have implemented, we believe with the same amount or, fewer dollars, we can protect a greater amount of resource in a shorter period of time, which, I think, was the intent of Congress.

Mr. NOONAN. Thank you. For the benefit of the respondents and for the audience, there was a report that they have submitted for the record which contains summaries of their recommendations for the eight case studies.

Again, for the benefit of encouraging this dialogue, I will quickly summarize the five recommendations on the Channel Islands and the sixth on the Chattahoochee and the Channel Islands, and the recommendations are as follows: Exchanges involving OCS leases in the vicinity of the park, purchase with reservation of concession operating rights, exchanges involving GSA or BLM lands, cooperative management agreements with Coast Guard and Navy and improved tax incentives for donation.

As regards Chattahoochee, the summary recommendations are as follows: The adjustment in park boundaries, improvements in the State and local protection efforts, legislation to help protect the river corridor, model analysis of cost effectiveness of alternative plans, clarification of legal authorities for NPS to manage less than fee interest, and finally, a combination of fee, easements, exchanges, zoning, cooperative management agreements, and air and water quality standards to protect the resource.

I would like to turn it over to the respondents. Each respondent will have 6 minutes. The first respondent is Mr. Charles Cushman, executive director, National Park Inholders Association.

STATEMENT OF CHARLES CUSHMAN, EXECUTIVE DIRECTOR, NATIONAL INHOLDERS ASSOCIATION

Mr. CUSHMAN. Thank you, Pat. The technical name is National Inholders Association. We represent people in the Forest Service, the Fish and Wildlife Service, and the Bureau of Land Management. We want to thank Senator Wallop for the opportunity to be here, and all the participants for this creative process. I want to thank the members from Interior and even those in the Park Service. I think all the members here were creative and were working hard on a solution. I am a little reluctant to commend them because in the past if I recommended anybody to the Park Service for a job they would be studying gooney birds on Guam in about a week and a half!

Anyway, the new land protection policy is an exciting step forward. We are very supportive of it. We think that the study process is a real creative process. We think it probably says more for what it doesn't say or hasn't said so far than what is specifically set out in this study. We think most of the team members tried to be creative.

There is no reward system within the National Park Service for being creative. In fact, there is a disincentive for being outside the company line, and we noted that there were some of the same old biases within some of the studies, particularly with respect to the easements. We know from personal experience that several of the studies, particularly the Appalachian Trail study, are an accurate representation of what has actually occurred there. When I read the Appalachian Trail report I didn't think it was talking about the same place that I had actually visited and the people that I had interviewed.

I will refer to our written statement for our full comments on the studies. I want to make a few additional comments which I think relate to this whole process of creativity in the preservation effort. I want to point, for example, to the upper Mississippi Head Waters Board as a real outstanding alternative of non-Federal preservation. The reason I brought that out is because it has the support of the local people, which is the bottom line here in the preservation effort in all the National Parks and National Forests. If you are not going to get the support, you are going to have continued wrangling for many years to come. The upper Mississippi has the support of the local people because it involved them in the process, but it was an accident. It almost didn't happen. The Omnibus Parks bill of 1978 almost precluded the upper Mississippi from ever having a chance. The Congressmen stalled the Federal legislation so that the local eight counties could get together in a joint powers agreement and form their own plan which ultimately the Park Service accepted as a good quality alternative.

I point this out because of a proposal that I want to make today. I propose that in the future when we consider studies of not just new areas but of old areas as well, and we consider the idea of a competitive study process. Instead of Congress funding $400,000 for the Columbia Gorge study, they should fund $300,000 for the Columbia Gorge and $100,000 as a grant that must be matched by some sort of State, local, county planning body, and they should match the funds to show good faith. We think instead of them turning many of these preservation efforts into a preservation versus no preservation, they will turn it into a how do you preserve rather than whether we are going to preserve attitude, and promote a competitive situation in which the local people actually become involved in the preservation process.

People are still excited about, still involved in the Upper Mississippi headwaters site, 2 years after the process. We were up there at a hearing that Senator Durenberger held on the subject 2 weeks ago, and we think it is a real model for people to look at in non-Federal legislation.

Now if we were to take all future studies and tie them to a competitive study, it would have a lot of advantages besides just involving the local people. It would also keep the Federal study honest, and we think, more creative. Tied in with that would be a second part called a preservation zone, something modeled after the enterprise zone for the inner city. This isn't a new idea. It goes very much along with the Reagan administration's look at a tax incentive and other things to solve these preservation problems. However, tying it into some sort of a competitive study process would get the local people and local government competing on how to do it and provide incentives for them to get involved in the planning, ultimately greatly reducing costs both in the overall planning effort and also cutting the wrangling down between families, communities, and the Federal Government.

The National Inholders Association, by the way, is announcing today that we are starting our own national land trust. The name hasn't been finalized yet. We are talking about cultural preservation land trusts. The idea behind that is to show that we are interested in preservation to encourage education in the use of alternatives and foster the donation of both fee and easements in Federal preservation efforts, but also to encourage alternative methods of recreation.

At this very moment in this administration the Park Service is continuing to turn down donated scenic easements. That has got to stop. Somewhere along the line that kind of bias has got to stop. We think by starting our own land trust and getting the landowners, giving them some other avenue to go, that we can ultimately help preserve the area and yet preserve the culture in the community.

Tying in with this idea of the competitive study process, we think as the Interior Department studies these areas, that you might pick a couple of new areas and hire an outside consultant team to study competitively with the Park Service. We think this would create a lot of opportunity, a real sort of competitive spirit, get the people more involved. We could do it in existing areas as well.

Finally, if their land protection policy is going to be successful, it must have oversight, of which there is very little now within the agency, and there is an insistence by the present Director that the oversight be maintained on a level of the superintendents. That simply hasn't worked, and it is not going to work in the future. Some sort of independent oversight team at Interior is going to have to monitor the implementation of these planning efforts and this land protection policy, or we are going to go back to the same old gang with the same old biases.

[The prepared statement of Mr. Cushman follows:]

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TESTIMONY

CHARLES S. CUSHMAN
Executive Director

Before

UNITED STATES SENATE

ENERGY AND NATURAL RESOURCES COMMITTEE
PUBLIC LANDS AND RESERVED WATERS SUBCOMMITTEE

HONORABLE MALCOLM WALLOP
CHAIRMAN

Dirkson Senate Office Building
Room 3110

Tuesday, June 15, 1982

National Inholders Association: A public–interest nonprofit national association that protects the rights of Americans on lands owned or regulated by government.

Thank you Senator Wallop for the opportunity to appear before this Committee. The National Inholders Association represents the 1,200,000 families that live within or adjacent to the boundaries of federally managed land in the United States. We actively seek to protect the rights of families and communities from unwise land acquisition and over-regulation that has in the past 16 years seen the strangulation of small communities and the purchase of the land of over 42,000 families (if you exclude the 45,000 land purchases in Big Cypress in Florida.)

We have fought for the rights of these people with enthusiasm that has angered some and in fact, have actually worked against federal legislation where we could not get provisions specifically protecting the rights of landowners and their cultural environment. We have supported other preservation legislation such as Channel Islands National Park.

It is, therefore, with great pleasure that I appear before you today because our organization has always fought uncontrolled and unplanned development. We have actively opposed subdivisions, condominiums, commercial development and speculative development within the boundaries of existing federal areas. However in our struggle to protect the human rights and property rights of landowners and in our effort to get the Park Service and other agencies to follow Congressional intent, some believe we have become anti-preservation, anti-park and the tool of developers.

Nothing could be further from the truth. The problem has been that we simply did not have a satisfactory alternative to the opposite polls of federal overkill or no control. When we fought federal abuse it appeared we were fighting for no control.

Now there is a real alternative in the successful program on the upper Mississippi called the Upper Mississippi Headwaters Board. It is a unique inter-local protection program that we feel will protect the rights of local landowners and that we can support. In fact, we have been using the Headwaters Board as a model in our presentations all over the country. We think this type of planning will create an opportunity for strong local zoning, recreation opportunities and a conduit for donations and preservation of critical lands which are needed in the public interest. We see it encouraging cooperative management of both public and private lands adjacent to the river on the Mississippi and in other areas which may deserve preservation in some form but would be damaged by federal overkill.

Without a doubt, the Upper Mississippi Headwaters Board is the outstanding example of non-Federal preservation in the United States. Yet it almost never happened. State and local officials had to struggle to hold off the Federal legislation until the local officials could get their plan together.

Why not make it the policy of this country that Congress authorize competitive studies in the future? For example, on the Columbia Gorge instead of giving $400,000 to the Park Service to study the Gorge, give them $300,000. Give the other $100,000 to a county-state inter-local planning group in a grant that must be match by county-state group in order to show good faith in the project.

Then set competitive deadlines for completing the respective plans. This would encourage local cooperation, give the local landowners a chance to actively participate, and actually foster an attitude of conservation. In some cases it would actually prove better, as it did on the Upper Mississippi to have the local-state plan do the job rather than the federal government. This program would likely save substantial amounts of money and in addition, certainly keep the federal planning team more honest. That is to say, their plans would have to be more realistic and more competitive.

Obviously, the Defense Department doesn't order major aircraft from just one company. They create competition which results in better aircraft at less cost. Why wouldn't that work in conservation?

Additional incentive could be provided to this program by using the "Enterprise Zone" concept now being looked at for the cities. There are already signs within this Administration of using tax incentives and other inducements for conservation. Just draw a circle around an area determined to be a candidate for preservation and provide local landowners and counties with tax and other incentives to protect the area.

The savings using this duel program could be substantial. On the Upper Mississippi, the Park Service estimated the cost would be over $4,000,000. Recent history in other areas indicates that could be a fraction of the final costs. The Upper Mississippi Headwaters Board came in at $180,000. Quite a substantial savings, plus having the enthusiastic support of local people, instead of generations of anger and frustration that often accompanies a federal takeover.

Unfortunately, much of the motivation for some non-federal preservation efforts around the country comes because of the fear, a very realistic fear, of a federal takeover. In no state is that fear more justified than in Minnesota with the GAO documented abuses on the St. Croix and in the Voyageurs National Park by the Park Service, and there is the continuing struggle for a way of life in the Boundary Waters Canoe Area.

The Upper Mississippi Headwaters Board is a prototype, we think the best in the country, for inter-local cooperation. This cooperation protects the political identity of the community and the independent political existence of local government. We call it structural disenfranchisement. With the federal government coming in, often basic voting rights and local control is turned over to appointed federal bureaucrats, thus depriving the local people of the right to vote for their governors. It is almost a federal colonization process.

Cooperation has certainly proved to be politically feasible in Minnesota with local jurisdictions not giving up their structure. We think cooperation can result in economies in terms of service to the communities and a higher degree of citizen participation in government with more satisfaction. The frustration and feeling of losing control often goes hand-in-hand with federal preservation efforts.

Cooperation can allow for a broadening in terms of the geographic base for planning and administration and providing governmental services without the feeling of a loss of local control. Orderly growth with a good exchange of ideas between the multi-jurisdictional areas can and should benefit all concerned while retaining the flexible ability to solve local problems that is so unavailable in federal solutions.

Frankly, the key to this whole issue is public support. When local people are dictated to, they rebel. When they are a part of the solution, they can be and will be more cooperative. We cannot afford to buy out the entire country and many more areas exist that should be protected. In recent years there has developed an anti-federal bias because the Congress has created many new areas and the federal agencies have implemented them, often in a manner inconsistent with Congressional intent. There has been little or no efficient system of oversight. As far back as May, 1978, the General Accounting Office said in its report Federal Protection and Preservation of Wild and Scenic Rivers is Slow and Costly: because the heavy-handed manner the federal agencies used, local support for protection was being lost and the preservation of these rivers was actually being hurt. They recommended solutions that were ignored.

Let's look at the situation as it now exists eighteen months into the Reagan Administration with respect to the federal preservation effort. Let's look at why the Upper Mississippi Headwaters Board is so important to the future of this country.

We regret to inform you that little has changed except the loss of funds in federal preservation efforts. The new land acquisition policy of the Park Service issued in 1979 required the use of alternatives to fee acquisition such as protective easements. The General Accounting Office says that the Park Service has failed to comply with their own policy and continues to do so to this day. Prior to the 1979 policy only 1% of acquisition involved alternatives. GAO says that since the new policy, the figure has risen to 2%.

By way of illustration, we point out that numerous inholders are offering to donate protective easements to prevent future development and the Park Service is declining to accept them. We submit that hundreds of millions of dollars have been squandered in the past and that the intent of Congress has been continuously ignored and often deliberately violated. These violations are continuing, and nowhere are they more evident than in the Midwest Region of the National Park Service.

We intend to document with this statement that because of these violations there are billions of dollars of hidden costs waiting to drain the Land and Water Conservation Fund if current and past practices are continued. The Wall Street Journal called it "The Silent Scandal" in a June 25, 1982 editorial on the Park Service land acquisition activities (copy attached). We contend that the Land and Water Conservation fund is being mortgaged so badly that future generations will never be able to pay the bill.

The General Accounting Office has issued six separate reports over three years in response to a number of Senators and Congressmen which say, in summary, that the Park Service and Forest Service are buying more land than Congress intended, paying too much for it, not using alternatives, not using priorities in their acquisitions, and are not paying attention to the needs of local government, communities or landowners.

GAO was so concerned about the conduct of the Park Service that in the last three reports the GAO recommended the Agency be forced to sell back lands not intended for purchase by Congress. The last item clearly puts to rest the idea that the Agency is simply obeying the intent of Congress and seriously questions whether Congress ever intended to buy all the land within National Park Areas in fee title. Congress certainly intended to protect the land and to try to make sure that it was managed in a manner compatible with protecting the values of the resource. In many cases, if not most, the value of continuing local communities was clearly indicated by Congress when it provided for the use of alternative forms of protection, such as easements, to prevent adverse future development.

In its report on Wild and Scenic Rivers in 1978, GAO was extremely critical of land acquisition on the St. Croix and felt that many more acres, 21,000 as opposed to 1,000 intended, had been purchased by the federal government. In "The Federal Drive to Acquire Private Lands Should Be Reassessed" (December 14, 1979) the GAO again criticized the St. Croix and also included the admission by a lands officer in Voyageurs that the park could have been protected if only the paper company lands were purchased. The Park Service simply did not need to buy all the private families out. We have attached the cover pages from the GAO reports.

Most recently, the Inspector General of the Interior Department found in an investigation of land acquisition that the Park Service did not provide accurate information to the Congress for it to make informed decisions about land acquisition and authorization of new areas. In one case, Santa Monica Mountains NRA, the Congress used $155 million as the figure for debate. The Inspector General found that at the time the bill was under consideration, the Park Service had done eight estimates of cost which ranged in value from a low of $245 million to a high of $675 million and that there was no evidence that any of these figures were transmitted to the Congress.

Current estimates now indicate that Santa Monica Mountains could cost well over $1 billion. Redwoods National Park is also approaching $1 billion with many other areas running three, four and five times the original estimates. In Lassen National Park, for instance, the Park Service told the Congress that a Declaration of Taking on a few acres designed to prevent geothermal exploration would cost $900,000 while knowing all the time that there was a great possibility that costs could be twenty (20) to thirty (30) times that figure. An interesting question for the Committee is that since a Declaration of Taking was used and Congress thought it was spending $900,000 for something that could cost $20 to $30 million, who appropriated the extra money? The government is obligated to pay what the court decides, and yet this Congress lost control of that appropriations process. It has to appropriate the extra money.

It appears from the Inspector General Report that inflation has not been the only factor in the increases or possibly even the main factor. Faulty information from the Agency and misuse of that information by certain members of Congress has certainly been a significant cause. Our information is that the Park Service appraisers did their job, but the Agency and certain Congressmen chose not to convey the full story to the Congress in order to facilitate the creation of the new area. An area which everyone agrees would never have been created had Congress known the full cost is Santa Monica Mountains NRA. Both the National Parks Advisory Board (of which I am now a member) and the Carter Administration did not feel this area was even suitable as a national area.

To give you some idea of the potential cost, former Assistant Secretary of the Interior Robert Herbst stated to the National Parks Advisory Board in October, 1980 that costs could run well over $20 billion.

Our position is that this cost potential exists only because the agencies are unwilling to change and that only you can force them to use less costly protection strategies. At present the land acquisition people are trying to wait until the next administration hoping to keep in place the machine that has cost the public so dearly. We hope this Committee will consider both how to motivate the local governments in their preservation efforts, and encourage a new program of making real use of the many alternative land protection strategies in the federal areas.

At the present time the Interior Department has adopted a new Land Protection Policy that if properly implemented could be a major improvement. The policy could make fee title acquisition a truly last resort and insists on the use of alternatives wherever possible. It mandates the use of federal funds in accordance with Congressional intent, something that the GAO says has not been happening. It requires new land protection plans that identify the interest necessary to protect the area and that only that interest be acquired. And perhaps most important, it requires the various departments to assure that the socio-cultural impacts of agency actions are considered. This last requirement has been totally ignored by the Park Service, the Agency entrusted with protecting our historic and cultural heritage.

We think the new Land Protection Policy will be cost effective if properly implemented. That is a big if. At this very moment, the present Director of the National Park Service is actively working to prevent any real oversight to make sure the system works. He does not want a special Interior Department team to oversee the implementation of the policy and instead wants that effort entrusted to the same individuals who have so badly handled land acquisition for the last ten years. He wants the superintendant to be in charge in each area of implementing the new policy.

If there is no effective oversight system set up, then the land acquisition sections of the various agencies will continue business as usual as has already happened in the 18 months of the Reagan Administration. Many millions of dollars have been wasted and opportunities have been foregone to review pending condemnations and accept donated easements.

Then there are the case studies. The American Land Forum Executive Summary was critical of the studies and clearly indicated that bias was evident in the approach of personnel to the studies. We have been told that the Director told at least one member of one of the study teams that he better come back with a recommendation for fee title acquisition in Grand Teton--or else. So much for unbiased studies.

The studies indicated that personnel didn't have the training necessary to truly examine alternatives. Several of the study teams made a valiant effort and some really looked at some creative alternatives such as Biscayne, but for the most part, the old fee title bias reared its ugly head.

If these studies are allowed to be the final product, they are a disaster. If they are just the first part of the process and they lead to further training, and the gaps in background indicated by the studies lead to an overhaul in the land acquisition training program of the Park Service, then they will have been well worth the effort.

It was evident that most of the team members simply didn't believe that alternatives could work. There is no question that for the use of alternatives to fee title acquisition to be successful, the implementors must believe in them. The Park Service is making no attempt to teach some good old boys new tricks.

We believe the Upper Mississippi Headwaters Board will work because the people involved believe that it can work. They will really get behind alternative forms of protection that stress the retention of the local land base.

The Park Service, on the other hand, has developed its own constituency which makes it almost immune from change. It doesn't have to use alternatives because it can just wait out the new administration. It has the attitude that it is above the law and any investigative authority. It is only through the appropriation process and committees such as this one that the Park Service can be made responsive.

For example, in response to the General Accounting Office reports the present Director of the National Park Service said at the National Parks Advisory Board meeting in October, 1981 "That with all due respect to Mr. Cushman's concern, the GAO is not infallible. The National Park Service has serious reservations about many of the so-called facts and allegations in those reports and is prepared to rebut many of them."

We would ask, how many? Six reports over three years, requested by such diverse individuals as Congressman Philip Burton, Senator Ted Stevens, former Senator Jacob Javits and Senator Daniel Patrick Moynihan, and done by several completely different teams from GAO make a significant statement. Which facts would they like to rebut? They got their chance in the GAO investigative process and were even asked to respond twice to the report ordered by Congressman Burton. We respectfully request that this Committee ask the Agency to respond to these reports.

To give you additional evidence of the cavalier disregard for the General Accounting Office, we offer these quotes by the current superintendant of Olympic National Park in a May, 1981 issue of the "Seattle Post-Intelligencer": "So who is the GAO? They have an opinion. We have instructions from Congress." We submit that is the whole problem. The GAO says the Park Service does not understand what Congress intended or else deliberately does not choose to pay attention.

The same superintendant went on to say in the same article, when asked about Section 5 of the Olympic National Park Act which guaranteed full use and enjoyment to the landowners, said: The decision to create the park in 1938 was such a "closely fought one that the politicians probably overstressed the meaning of that term to calm people down. This is the only park I am aware of where the local people have a different interpretation of it."

We submit that the local people will never trust the Park Service or the federal government if they cannot rely on bureaucrats to follow what was promised when the legislation was passed. We also submit that protecting new areas will get progressively more difficult if the Park Service does not keep Congressional promises to existing areas. One further note on the superintendant from Olympic is that he was the first superintendant at Lake Chelan NRA and in no report was the GAO more positive that the Park Service did not act consistently with the intent of Congress than in the report on Lake Chelan NRA.

Preservation efforts across the country are being frustrated by the heavy-handed actions of the agencies. The law is simply ignored. In a personal interview the Associate Regional Director of the Northwest Region of the Park Service (Russ Dickenson had just been appointed Director) when asked why the Agency managed Lake Chelan like a park when the law said it was an NRA, said "Many of us thought it should have been a park." When pressed on the issue as to how they could simply ignore the law, he said in front of witnesses: "We thought it was a bad law."

The problem is continuing with the use by some Congressmen of line item Land and Water Conservation Fund appropriations to frustrate any effort by the Interior Department or the Park Service to prioritize land acquisition as suggested by the General Accounting Office. Sweeney Ridge in California is a perfect example of trying to force the Park Service to spend $9.6 million to buy a piece of land the Agency didn't want in the Carter Administration, and does not want now. No matter that many other areas are more critically threatened, or that there are deficiency judgments coming up which may not be able to be paid. Somewhere we have to professionalize the Park Service and stop from making it a personal bartering ground for power hungry politicians.

For example, on November 14, 1979, the former Chairman of the Parks Subcommittee in the House was quoted in the Pacifica Tribune about the failure of the Interior Department to recommend Sweeney Ridge for inclusion in the National Park System. He said it "Won't have any impact at all on my committee and I don't think on the House." He also said he simply "didn't take very seriously" a report to the Congress in October 1979 from Secretary of Interior Cecil Andrus that held that Sweeney Ridge did not meet criteria for federal acquisition. The former Chairman at the time said he'd heard about the report "second hand.... it didn't make much of an impact. I didn't take it very seriously." He added that "three fourths of the parks bill" which passed recently didn't have the recommendation of the Park Service. "The Secretary of the Interior's recommendation won't have any impact at all on my committee and I don't think on the house...", he said.

This cavalier attitude in dealing with national parks is illustrated by an exchange between Congressman James Oberstar and Congressman Phil Burton with regard to the Upper Mississippi. It was reported in the San Jose Mercury News, July 30, 1978 that Burton went to Oberstar saying, "Jim, I'm going to get even with you one of these days. I'll make the whole (expletive deleted) eighth (Oberstar's) district a national park." "(Expletive deleted), I thought you already had.", replied Oberstar. The story continued: "Some of the exchanges between Burton and Oberstar may have been in fun. But not everyone in the house laughed." The Upper Mississippi Headwaters Board almost never had a chance to happen.

Another current problem is that of non-profit land trusts. While having a great deal to offer, they can and are being misused. In the Sweeney Ridge case cited earlier, the Trust for Public Land made a special side deal with the landowner, then mounted a political campaign to get the Park Service to buy the land. The Trust for Public Land was to pay $8.5 million and sell it to the government for $9.6 million. A situation had been created where it was financially beneficial to have a land trust rush to a landowner which the Park Service did not want to buy from, lock up a contract, then force the Agency to buy by political pressure, thereby hurting many other landowners or parks that were in a higher priority. In fact, with land trusts, we must consider if we haven't fostered a situation where the government is bidding against itself. In effect, through the use of political connections trusts use Land and Water Conservation Fund money to buy land and make a profit (at least in terms of paying tremendous overhead and salaries). This situation with Trust for Public Land has happened several other times that we are aware of.

The Western Regional Director of the National Park Service said in a recent internal memo: "TPL appeared to be motivated by the monetary return that came to them plus a significant public relations event that promoted them as a benefactor to the government". In another part of the memo he said, "In the pursuit of acquisitions that have a monetary return to (TPL) they do not evidence the public spirited objective that brought them into existence." When there was more money for parks, it was a matter of principle, but "Now it is a matter of grave concern and disrupts our ability to implement the Land Protection Policy." "When the government is not consulted beforehand, it appears that the moving force behind TPL's action is more for their benefit than that of the public." The memo expressed serious concern about land trusts setting priorities and forcing those priorities by political means. (A copy of the newspaper article is attached.)

The National Inholders Association has announced plans to establish a national land conservation trust to provide an alternative to the traditional trusts, and as an education tool for the use of alternative preservation strategies.

Presently there are 5,000 existing condemnations in process and many millions of dollars could be saved if, where possible and compatible with the park resource, these people were given the opportunity to keep their land but give or sell a protective easement or some other device to prevent adverse development. We have recommended to our members that they donate easements wherever possible. In every case we know of, the Park Service has turned them down.

Mike Shendrick of Indiana Dunes has been under condemnation for several years. He has offered to donate a protective easement on his $200,000 property with a home on it, but the superintendant said he would not accept it. There are several others like this case in Indiana Dunes. We are talking about 1981 and 1982--not a few years ago. This is going on right now.

In another case on the Appalachian Trail, Reverend Charles Evans offered the Park Service a free easement over his property. The Agency turned him down and then condemned him in the spring of 1981. An Interior Department team reviewed the case in September 1981 and said the Agency did not need fee title and that an easement was acceptable. Nevertheless, the man was forced to sell just before his trial date a few weeks ago and sold for $40,000 property the Agency could have protected for nothing.

These same types of situations are going on all over the country. By encouraging the use of donated or low cost protective easements, this Committee could save hundreds of millions of dollars, protect resources faster and with less landowner hostility.

What I have just discussed does not paint a pretty picture. The preservation machine in the federal government is out of control and is only currently somewhat restrained by the lack of funds. The system for the wasteful practices is completely in place with virtually no change. Six General Accounting Office reports have been completed but never sent by the Park Service to their field people who need to see them. There are numerous newspaper stories and magazine articles documenting the abuses. One film has been completed and another, a 90-minute special for television is close to completion. A network television show illustrated the problems in 1979. One book was just completed on the subject with another scheduled for publication in September. All these reports and yet little or no action.

There has to be an alternative. We think the Upper Mississippi Head Waters Board offers the best prototype for a solid, well thought out inter-local solution that is less costly, more responsive, enjoys public support and provides quality protection both for the resource and for the people.

We recommend that this Committee consider the following actions:

1. A system of grants to local planning agencies as a competitive system to balance the planning or study efforts of the federal agency when mandated to study any new area for inclusion as a national park or other federal area. Just as we do when considering new weapons systems for the military, good competition would be healthy and cost effective. The best plan would win out. Also, this process would teach local people a great deal about preservation strategies which would build public support and prevent a special alternative like the Headwaters Board from being bulldozed over in the legislative process.

2. That we consider a system of preservation zones with incentives for local communities and landowners not unlike what we are considering in the enterprise zone system for economic redevelopment.

3. Recommend oversight hearings in the land acquisition practices of the Park Service and Forest Service.

4. Oversight hearings into the management of federal areas and the frustration people and local government feel being managed by unresponsive, unelected, appointed bureaucrats. Resources are possibly managed well that way, but not people.

5. Request a review of all current pending condemnations by the federal land management agencies to see which are appropriate by the new land protection policy of this administration.

6. Require that wherever remotely feasible, easements be used instead of fee title acquisition and that donated easements be accepted unless the land is required for some specific administrative purpose--a road or headquarters. Build in a system of incentives so that the local land manager is enthusiastic about the use of easements and feels that using alternatives will help his career as opposed to the situation now where he feels he is bucking the system if he uses easements.

7. That any future studies of potential federal areas include a socio-cultural study of the local people and their history by a qualified historian. Put this requirement into law.

I appreciate the opportunity to appear here before you today and will answer questions you may have.

Charles S. Cushman
Executive Director

Attached as part or our testimony is a copy of one Socio-Cultural Assessment which documents the abuses that have occured on the Buffalo River in Arkansas. This assessment is representative of many other areas and illustrates the conflicts that exist between local people and the National Park Service and Forest Service. We included two assessments in our testimony at the 1981 Workshops, neither of which were included in the final printing by some oversight. We hope this year our full testimony can be printed including all the attachments. It is critical in this process of evaluation and review that an understanding of the stresses between landowner and agency be included.

ATTACHMENTS:

1. Wall Street Journal Editorial May 25, 1982 "The Silent Scandal".
2. Peninsula Times Tribune April 20, 1982 "Charges in Deal for Park".
3. GAO Report cover-Federal Land Acquisition and Management Practices CED-81-135 September 11, 1981
4. GAO Report cover-The Federal Drive To Acquire Private Lands Should Be Reassessed. CED-80-14 December 14, 1979
5. GAO Report cover-Federal Protection and Preservation of Wild and Scenic Rivers Is Slow And Costly. CED-78-96 May 22, 1978
6. GAO Report cover-Federal Land ACquisitions by Condemnation--Opportunities to Reduce Delays and Costs. CED-80-54 May 14, 1980
7. GAO Report cover-Lands In The Lake Chelan National Recreation Area Should Be REturned To Private Ownership. CED-81-10 Jan. 10, 1981
8. GAO Report cover-The National Park Service Should Improve Its Land Acquisition and Management At The Fire Island National Seashore. CED-81-78 May 8, 1981
9. Cover and press release-Inspector General Report-Department of The Interior--Two parts--Cost Estimates Part I and Park Boundaries and Land Acquisition Practices Part II. E-FW-NPS-5-81 (a) and (b)
10. Senate Report 96-363 Appropriations-Interior Subcommittee.
11. Senate Report 96-251 Appropriations-Justice Subcommittee.
12. Washington Post Editorial June 4, 1980 "One Man, One Park".
13. San Jose Mercury July 30, 1978 "Phil Burton: The 'Benevolent Steamroller' of Washington"
14. Pacifica Tribune November 14, 1979 "Burton Optomistic About Acquiring Sweeney Ridge"
15. Summary-Management Plan--Mississippi Headwaters Board.
16. Internal Park Service memo regarding Congressman John Seiberling's personal involvement in the Cuyahoga Valley National Recreation Area. This memo probably led to the Wall Street Journal Editorial previously listed. Oct. 18, 1977.
17. Internal Park Service memo by Howard Chapman, Regional Director in the Western Region regarding the Trust For Public Land and its actions involving Sweeney Ridge in California. Feb. 10, 1982.
18. Socio-Cultural Assessment--Buffalo National River--Kent Anderson, Phd.

TUESDAY, MAY 25, 1982

THE WALL STREET JOURNAL.

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REVIEW & OUTLOOK

The Silent Scandal

Suppose the U.S. Army were buying a lot of land and asked Congress for $100 million when it knew the real cost would be closer to $500 million. Suppose it used arbitrary power to clear ranchers, retirees and summer homeowners off the land. Suppose it gave some people three months to vacate, and sent armed officers along with the appraisers.

Suppose furthermore, it couldn't get all the land it wanted at fair market value because of its grossly underestimated budget and so arranged with sympathetic local officials to slap zoning changes, building restrictions and the like on targeted parcels to force landowners to sell at its price.

And suppose that the boundary lines on these Army ranges kept changing to include some people, at their loss, and exclude others, at their considerable gain. That an internal investigation, after noting that a series of preliminary boundary maps were missing from the files, offered the official conclusion that it could find no documentary evidence of wrongdoing. And, to top it off, that all the land-buying served no overriding national purpose. We think there might be some public outcry on the situation.

Well, one major federal bureaucracy has been charged with just this pattern of behavior. It's not the Army, but that motherhood and apple pie outfit, the National Park Service.

Evidence has been mounting for years that something is very wrong in the way the Park Service has been taking private property to add to the vast federal land hoard (about one-third of the U.S. land area). The U.S. General Accounting Office has issued eight thick audits severely criticizing Parks and the Interior Department. Interior's own Inspector General recently completed a major investigation; Parks personnel, citing the summary, claim they were exonerated, but that hardly holds up when you look at the main body of the report.

In the Santa Monica Mountains east of Malibu and in the Cuyahoga Valley between Akron and Cleveland, Ohio, the Park Service has been assembling "national recreation areas" by means particularly vulnerable to attack. Landowners in the Santa Monica Mountains say they have been told by park officials on the scene that their property won't be taken, yet they have discovered it on acquisition lists filed in Washington. The local park supervisor has encouraged conservationist-dominated local boards to impose land-use restrictions on them, further adding to their anxiety.

The threat has become reality in the Cuyahoga Valley, a moderately scenic, semi-suburban area. Park officials promised to take only 30 homes but actually have condemned 300, converting the area into a strange, seedy landscape of boarded-up, decaying homes, weed-grown farms and tumble down roadside stands.

A few homes were spared. One expensive dwelling was occupied by a park official. The area encompasses the home of Congressman John F. Seiberling, chairman of the Parks subcommittee of the House Interior and Insular Affairs Committee, and one of the proponents of park expansion. It was not condemned. Department files reveal that the Congressman also succeeded in saving the homes of some of his neighbors.

These exemptions were made possible by "scenic easements," which allow owners to keep their land if they agree not to make changes that would affect the "scenic" quality. Congress indeed has encouraged Parks to purchase scenic easements rather than land. The unwillingness of park administrators to accept this guidance has been mainly responsible for purchase cost overruns. Congress authorized $156 million for the Santa Monica project; the Park Service now estimates costs could go to $700 million. The Cuyahoga acquisition went from $35 million to $70 million and the latest estimate, nearly three years old, calls for $100 million more.

The pattern is consistent nationwide. However the department's land grabbers feel about birds and trees, they seem to have little regard for people.

The personal anguish occasioned by Park Service takings played a large role in Interior Secretary Watt's decision to place a moratorium on land acquisition last year. Loud environmentalist outcries forced him to rescind his action. Just a few days ago, he issued a new directive to field staff to de-emphasize acquisition in favor of less costly means, like scenic easements, of achieving objectives. It remains to be seen how that will play with his bureaucracy and its environmentalist constituents. It also remains to be seen how much relief already targeted homeowners will get.

The scandals of the 19th Century involved large private interests exploiting public land. Today, the reverse is true. Powerful public agencies exploit little property owners. Many in Washington will argue that the ends justify the means, but to us it looks no prettier.

THE PENINSULA TIMES TRIBUNE
Tuesday, April 20, 1982

Charges in deal for park

Memorandum accuses Trust for Public Land

By [illegible]
Times Tribune staff

SAN FRANCISCO — An internal memorandum from the National Park Service accuses a private group of exerting pressure to buy a scenic ridgeline in Pacifica mainly for its own financial benefit.

The memorandum concerns the Trust for Public Land (TPL), a 10-year-old private, nonprofit organization in San Francisco that is acting as a middleman in arranging the sale of Sweeney Ridge to the Park Service. TPL would keep $1.1 million of the total $11.6 million cost for its revolving fund if the sale goes through.

The memo-writer concludes that "in the pursuit of acquisitions that have a monetary return to (TPL), they do not evidence the public-spirited objective that brought them into existence." The writer recommends that the Park Service negotiate sales without outside interference if it is to maintain its own priorities.

The memorandum says TPL forced the Park Service two years ago to pay $1.65 million for property in the Point Reyes National Seashore that the Park Service might have been able to obtain cheaper on its own. The memorandum also accuses TPL of lobbying congressmen and key appropriations staff members to get money appropriated for the purchase of Sweeney Ridge.

The memorandum was obtained by the Times Tribune under the Freedom of Information Act and apparently was written in Washington by Howard Chapman, director of the Western Regional Office of the Park Service as a "position paper" on congressional hearings in January on Sweeney Ridge.

"That's pretty interesting," said Harriet Hunt-Burgess, a TPL vice president, in response to hearing the contents of the memo. Hunt-Burgess has led the fight for getting Sweeney Ridge acquired. She had not seen the memo.

"It's true that we support our organization through sale of lands but the largest percentage of the projects we do do not bring in any support," she said. "Last year we acquired another project at Point Reyes for less than [illegible]," she added. "We made practically nothing on it. The Park Service was in a bind and we did it to help them out."

The unsigned, undated background memo on TPL is among five documents furnished to the Times Tribune after a series of FOI requests to both the Washington and San Francisco offices of the Park Service for new documents on TPL and Sweeney Ridge.

Initially, the Park Service said there were no such documents. But after a follow-up letter and phone call, five more letters, including the backgrounder on TPL, were supplied.

Chapman was out of town and did not return phone calls about who wrote the memo. Public information officer Larry Quist said he did not think it was Chapman.

However, Ric Davidge, who heads the Reagan administration's Land Policy Group, said Chapman not only wrote it, but gave his permission to pass it along to other members of the group involved in developing guidelines for dealing with nonprofit land trusts like TPL.

The administration is formulating policies which will rely heavily on such groups for buying parkland in the future.

The memo says TPL initially presented itself to the National Park Service as an organization that could assist in land acquisition.

This would be accomplished by buying land below market value and then selling it to the Park Service [illegible]

[illegible] TPL for $1.65 million, the land might have come cheaper or even been donated by BCA, with tax write-off benefits.

"TPL appeared to be motivated [illegible] by the monetary return that comes to them plus a significant public relations event that promoted them as a benefactor to the government," the memo says.

When there was more money for parks, it was a matter of principle, but "now it is a matter of grave concern and damaging our ability to implement the Land Protection Policy," the memo says. "When the government is not consulted beforehand, it appears that the moving force behind TPL's action is more for their benefit than that of the public."

Asked about the BCA property, Hunt-Burgess said the transaction occurred before she came to TPL and she could not comment. But she noted that the Interior Department had commended TPL for its role recently in buying land for the Cumberland Island National Seashore. TPL "took a loss on that one," she said.

The memorandum about TPL discusses how Sweeney Ridge was able to move into the appropriations process ahead of higher priorities. The Park Service under both the Carter and Reagan administrations had considered it a low priority.

The memo says, "Attempts began to be evident when the TPL president, Martin Rosen, is a co-sponsor [illegible] at a fund-raising party in San Francisco on Feb. 12, 1982 for Representative Les AuCoin, who is a member of the House Subcommittee on Appropriations for Interior and Related Agencies."

The memo adds that Hunt-Burgess [illegible] contacted with aides and congressmen, maintained frequent contact with five staff clerks for key house appropriations committees and testified before congressional committees about Sweeney Ridge.

The memo notes that TPL's charter provides that no substantial part of its activities involve attempting to influence legislation or intervening on behalf of a political candidate.

Hunt-Burgess acknowledged contacts with all the individuals named in the memorandum, but said TPL's lobbying was carefully evaluated in advance.

"I am a registered lobbyist," she said. "Within the limits of our charter, we are allowed to do a certain amount of lobbying. Our lobbying is really a very small part of what we do. We don't undertake that activity without a very careful analysis.

"It's true, I go around to all these offices. We want to be aware of what the priorities are. It's no big deal. So does everybody."

Hunt-Burgess said the law has been relaxed in recent years to allow nature groups more lobbying and said Chapman might not be aware of that.

She said Rosen was careful to separate his involvement with TPL from his role as a "private citizen" when he co-sponsored the party for Rep. Les AuCoin of Oregon. Edgar Wayburn, an active conservationist on the board of directors of the Sierra Club, was co-sponsor.

"He (AuCoin) is generally considered a good environmentalist," she said. "He's been active in the coastal drilling issue and local people wanted to express their appreciation . . . (Rosen) was very careful to separate it from his life at TPL."

Hunt-Burgess said the strong desire of local people to see Sweeney Ridge acquired, not TPL's political power, got it moved up the appropriations ladder.

"The fact that every elected official in the Bay Area supports Sweeney Ridge should mean something to Mr. Chapman," she said.

BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To Senator Ted Stevens

Federal Land Acquisition And Management Practices

The National Park Service, Department of the Interior, followed a general practice of acquiring outright ownership of all lands in the National Park System. However, in April 1979, the Service revised its land acquisition policy to give greater consideration to protecting areas through the use of easements, zoning, and cooperative agreements with State and local governments. Although some progress has been made in using alternatives, the Park Service continues to purchase almost all land outright.

GAO makes several recommendations the National Park Service should take to improve its land management and acquisition practices.

In February 1981 the President proposed a moratorium on Federal land acquisition and proposed the use of land acquisition funds for repairing and improving facilities in the National Park System. The President also stated that postponing Federal land acquisition will allow for a thoughtful policy review of existing park legislation. Interior has established a Lands Policy Work Group to develop a clear and positive national policy outlining the Federal role in open space conservation.

CED-81-135
SEPTEMBER 11, 1981

REPORT BY THE

Comptroller General

OF THE UNITED STATES

The Federal Drive To Acquire Private Lands Should Be Reassessed

The Federal Government owns over one-third of all U.S. land with authorization to acquire up to $4 billion of private land during the next 11 years.

The National Park, Forest, and Fish and Wildlife Services had been following a general practice of acquiring as much private land as possible regardless of need, alternative land control methods, and impacts on private landowners.

GAO recommends that the Secretaries of Agriculture and the Interior

- jointly establish a policy on when lands should be purchased or when other protection alternatives, such as easements, zoning, and Federal controls, should be used;
- critically evaluate the need to purchase additional lands in existing projects; and
- prepare plans identifying lands needed to achieve project purposes and objectives at every new project before acquiring land.

GAO believes the Congress should oversee the implementation of these recommendations.

This review was made at the request of the Chairman, Subcommittee on National Parks and Insular Affairs, House Committee on Interior and Insular Affairs.

CED-80-14
DECEMBER 14, 1979

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Federal Protection And Preservation Of Wild And Scenic Rivers Is Slow And Costly

Few rivers have been added to the national wild and scenic rivers system under the Wild and Scenic Rivers Act of 1968. The national system is growing slowly, and processes for adding rivers are not functioning well. The preservation of rivers currently in the system has also progressed slowly. Acquisition of lands and easements as a preservation strategy has proven controversial, time consuming, and increasingly costly. To fulfill the objectives of the act, the Departments of Agriculture and the Interior will have to expedite and improve the processes for adding rivers to the system and will have to develop and use alternative preservation strategies.

UNITED STATES GENERAL ACCOUNTING OFFICE

CED-78-96
MAY 22, 1978

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Federal Land Acquisitions By Condemnation -- Opportunities To Reduce Delays And Costs

The Federal Government's many land acquisition programs have brought about a large backlog of court cases in which the Government seeks to acquire by condemnation private land for public use. Such action is generally taken when a landowner is unwilling to sell at the Government's offered price or when the Government cannot acquire clear title without a judicial determination.

Land values involved in condemnation cases are in the hundreds of millions of dollars. Court awards or settlements often substantially exceed Government appraisals, and acquisition costs are increased by high administrative costs and long delays in court.

This report recognizes efforts of the Department of Justice to reduce the caseload. It also recognizes that the condemnation of real property is a complex process. However, it points out opportunities for Justice and land acquisition agencies to expedite cases and reduce costs. It also points out ways to obtain fair and speedy trials and improve the treatment of landowners.

UNITED STATES GENERAL ACCOUNTING OFFICE

CED-80-54
MAY 14, 1980

REPORT BY THE

Comptroller General

OF THE UNITED STATES

Lands In The Lake Chelan National Recreation Area Should Be Returned To Private Ownership

Lake Chelan National Recreation Area was established in the State of Washington in October 1968. The Congress intended that land acquisition costs be minimal, the private community of Stehekin in the recreation area continue to exist, existing commercial development not be eliminated, and additional compatible development be permitted to accommodate increased visitor use.

During the intervening 12 years, the National Park Service has spent about $2.4 million to acquire over half of the 1,730 acres of privately owned land in the recreation area. Many of these acquisitions are contrary to what the Congress intended and to the Service's land acquisition policies. Moreover, the Service plans to acquire most of the remaining privately owned land in the recreation area.

The Congress should not increase the statutory land acquisition appropriation ceiling under Public Law 90-544 above the $4.5 million already approved until the Service has defined compatible and incompatible development, prepared a plan justifying the need to acquire land from private owners, and spent the funds obtained from selling back all compatible land to private ownership.

UNITED STATES GENERAL ACCOUNTING OFFICE

CED-81-10
JANUARY 22, 1981

BY THE U.S. GENERAL ACCOUNTING OFFICE
Report To The Honorable
Daniel P. Moynihan
United States Senate

The National Park Service Should Improve Its Land Acquisition And Management At The Fire Island National Seashore

The National Park Service's zoning standards at Fire Island National Seashore are too restrictive and permit land to be acquired that is not needed to achieve the purposes of the Fire Island National Seashore Act. The National Park Service should revise its zoning standards, establish criteria for acquiring properties, and sell back to private citizens land it acquired but does not need.

CED-81-78
MAY 8, 1981

UNITED STATES
DEPARTMENT OF THE INTERIOR

Office of Inspector General

SPECIAL REVIEW OF
LAND ACQUISITION POLICIES
AND PRACTICES IN THE
NATIONAL PARK SERVICE

PART I - COST ESTIMATES

November 1981

DEPARTMENT of the INTERIOR
news release

OFFICE OF INSPECTOR GENERAL

Tom Wilson (202) 343-3171
Kathy O'Neil (202) 343-6459

For Release November 30, 1981

WATT REQUESTED REVIEW OF PARK LAND ACQUSITION POLICIES SHOWS PAST FAILURE OF INTERIOR TO COMMUNICATE ON REAL COSTS

National Park Service (NPS) land acquisition cost estimates—never formally communicated to the Congress—ranged from 60 to 400 percent above the figures actually used in legislative debate on the creation of new parks and park expansion, the Interior Department's Inspector General Richard Mulberry, said today.

A review of NPS land acquisition practices requested by Interior Secretary James Watt uncovered no evidence that the Service intentionally misrepresented land acquisition costs to the Congress, Mulberry said, but there is no evidence to show that these much higher estimates ever reached the Congress in time to be used in the debate prior to legislative action.

"As a result, there has been a commitment on the Government and the taxpayer to fund what turn out to be ballooning land costs," Mulberry said.

As an example, Mulberry noted that NPS prepared eight cost estimates prior to the establishment of Santa Monica Mountains National Recreation Area in California in November 1978. The Inspector General's review found no evidence that any of the estimates, ranging from $242 million to $675 million, reached the Congress which authorized the new park with a land acquisition ceiling of $155 million. The review could not determine the basis for the $155 million legislative authorization by the Congress, Mulberry said, which was nearly 400 percent below the highest NPS estimate.

Mulberry said his staff reviewed land acquisition cost estimating practices at four national parks or recreation areas after Interior Secretary James Watt had received complaints from affected landowners and other citizens. Companion reviews of park boundary problems and the treatment of landowners will be completed early next year, he said.

In November 1978, the Congress authorized $29 million for expansion of the boundaries at Cuyahoga Valley National Recreation Area in Ohio, based on NPS estimates. However, the Park Service did not inform Congress at that time that it anticipated significant cost overruns for land acquisition within the existing boundaries. All but $9 million of the new authorization was used to pay for land within the pre-November 1978 park boundaries. The Park Service now estimates that it will take a total of $166.1 million to purchase all the authorized lands or $96 million more than the current land acquisition ceiling of $70.1 million.

In addition to the parks mentioned above, the review covered Koloko-Honokohau National Historical Park in Hawaii and Lassen Volcanic National Park in California because of similar problems of inadequate land cost estimates reported there.

Although the review initially included Sleeping Bear Dunes National Lakeshore in Michigan, Indiana Dunes National Lakeshore in Indiana, and Fire Island National Seashore in New York, detailed reviews were not conducted at those parks because they were established more than 10 years ago and the information gathered would not represent current NPS practice, Mulberry said.

The review provides NPS with recommendations on how to improve cost estimate practices to make them a more useful and realistic tool for Congressional use, he said. A NPS official said the Service generally agreed with most of the review's recommendations and will proceed to take corrective action.

x x x

Calendar No. 380

96TH CONGRESS
1st Session
SENATE
REPORT
No. 96–363

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATION BILL, 1980

OCTOBER 10 (legislative day, OCTOBER 4), 1979.—Ordered to be printed

Mr. ROBERT C. BYRD, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 4930]

The Committee on Appropriations, to which was referred the bill (H.R. 4930) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1980, and for other purposes, reports the same to the Senate with various amendments and presents herewith information relative to the changes recommended:

FISCAL YEAR 1980

Amount of bill as passed by House	$10,231,970,000
Amount of increase by Senate	17,123,805,000
Total of bill as reported by Senate	27,355,775,000
Estimates considered by House	8,440,770,000
Estimates considered by Senate	28,577,538,000
The bill as reported to the Senate:	
Under the budget estimate, 1980	1,221,763,000
Over appropriations, 1979	15,506,929,000

SUMMARY OF BILL

For this bill, estimates totaling $28,577,538,000 in new obligational authority were considered by the Committee for the programs and activities of the agencies and bureaus of the Department of the Interior, except the Bureau of Reclamation, and the following related agencies:

Land and Water Conservation Fund have fostered equally rapid increases in appropriations. At the same time Congress has also authorized a major expansion of the National Park System and granted wider general authority for Federal land purchases to other resource management agencies. In some cases, dollars have piled up faster than these agencies can spend them properly. This in turn has resulted in some land acquisition proposals that were hastily conceived, perhaps more to utilize available funding than to address actual program needs.

At the beginning of August—entering the last 2 months of the 1979 fiscal year—little more than half the appropriations available to the land managing agencies had been obligated. Three of these agencies had yet to obligate even the funds carried forward from fiscal 1978. A tabulation of available funds obligated by last July 31 by agency follows:

Agency	Appropriations available	Obligated by July 31	Percentage obligated
National Park Service	$289,580,000	$209,700,000	72
Forest Service	155,294,000	50,900,000	33
Fish and Wildlife Service	60,078,000	23,700,000	39
Bureau of Land Management	2,589,000	942,000	33

Clearly, in the Committee's judgment, the availability of more than $220,000,000 in unused appropriations diminishes the need for more new funding in fiscal 1980.

The Federal Government already owns well more than one-third of the Nation's land, and the Committee believes the current drive to acquire still more should be reassessed. Too often, it seems, Federal land acquisition is seized upon as a quick fix for recreation, resource conservation, preservation, and environmental protection proposals. Meanwhile, the rush to bring more and more acreage into Federal ownership has at times trampled upon individual property rights, vastly inflated land values and, in some cases, fostered profiteering and corruption. Preliminary findings from a current General Accounting Office investigation have suggested widespread problems in this area and seriously questioned the real need for many land acquisition proposals and practices.

Accordingly, wherever any fiscal 1980 budget proposals for Federal land acquisition were not clearly justified, or wherever any question of suitability or authority existed, the Committee has deferred funding for more careful review. And wherever the land acquisition agencies have not demonstrated that they can obligate available appropriations in a timely and effective manner, the Committee has reduced the level of new funding.

Further, in an effort to hold down overall spending in this account, the Committee has approved a $10,000,000 general reduction in Federal programs. This cutback should be applied to those acquisitions which cannot be consummated and do not require immediate funding and are contributing to the large unobligated balance.

State assistance.—The Committee is keenly aware of strong congressional support for maintaining State recreation grants at the

Calendar No. 265

96TH CONGRESS } SENATE { REPORT
1st Session } { No. 96–251

DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION BILL, 1980

JULY 19 (legislative day, JUNE 21), 1979.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Appropriations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 4392]

The Committee on Appropriations, to which was referred the bill (H.R. 4392) making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies for the fiscal year ending September 30, 1980, and for other purpose , reports the same to the Senate with various amendments and presents herewith information relative to the changes made.

AMOUNT IN NEW BUDGET (OBLIGATIONAL) AUTHORITY

Amount of bill as passed House	$7,695,059,000
Amount of Senate bill over comparable House	44,032,000
Amount added by Senate for items not considered by House	512,953,000
Total bill as reported to Senate	8,252,044,000
Amount of appropriations, 1979	9,154,181,000
Amount of budget estimates, 1980, as amended	8,526,868,000
The bill as reported to the Senate:	
Under the appropriations for 1979	902,137,000
Under the estimates for 1980	274,824,000

the Carter Warehouse and the National Bank of Georgia and 50 positions and $2,052,000 to fund the effort to denaturalize and deport Nazi war criminals. For the Civil Division, the administration transmitted a budget amendment requesting 29 positions and $1,024,000 to support Department of Energy regulatory programs. In a separately transmitted amendment, an additional request for 30 positions and $1,235,000 was requested for the Land and Natural Resources Division to handle matters relating to toxic substances and hazardous wastes. The Committee recommends that these amendments be approved because they are responsive to new problems and problems that have not been responsibly dealt with in the past.

Although the Committee believes that the amendments submitted by the administration respond to the most urgent needs, there are also a number of other high priority unmet needs that the Committee on the Judiciary identified in developing the 1980 Department of Justice Authorization bill.

Because of the high priority that must be assigned to the Criminal Division's prosecution of organized crime and racketeering, fraud, public corruption, and narcotics and dangerous drug offenses, the Committee recommends that 81 positions and $1,893,000 be added to the bill.

LAND AND NATURAL RESOURCES DIVISION

The Congress, in a number of ways, has expressed its concern about increasing workload placed on the Land and Natural Resources Division by recent legislation relating to land acquisition, Indian matters, environment and public health, energy and conservation. To provide some relief in these areas, the House recommended an increase of 25 positions and $700,000 over the amount included in the budget request; this increase being directed principally at land acquisition matters. The Committee is extremely concerned about the number of land acquisition cases pending in the Department of Justice and has increased the funding so that expeditious action may be taken to clear the backlog of cases. However, the Committee expects the Department of Justice to utilize these funds first to insure the credibility of the 20,000 condemnations pending and, in particular, the 10,100 declarations of taking before initiating further litigation.

The Administration submitted a budget amendment for 30 positions and $1,235,000 relating to the need to deal with the legal problems associated with toxic substances and hazardous wastes.

In addition to approving the increases for land acquisition and toxic substances, the Committee also recommends an increase of 20 positions and $970,000 to handle longstanding workload and underfunding problems and to prepare for major land acquisitions in Alaska. No less than 8 of these positions are to be used to strengthen the prosecution of pet bird smugglers. Recent outbreak of exotic Newcastle disease have been traced to smuggled pet birds and it is imperative that the laws be enforced to protect the Nation's broods, turkey and egg industries.

The Committee also recommends that an additional 35 positions and $1,667,000 be added to the budget request for the Civil Rights Division. The additional positions recommended will permit the Division to respond to the additional responsibilities that have been assigned to it during a period where few budgetary increases have been provided.

WEDNESDAY, JUNE 4, 1980

The Washington Post

AN INDEPENDENT NEWSPAPER

One Man, One Park

WHEN THE LARGEST parks bill in the nation's history worked its way past the Senate in the closing days of the 95th Congress, there was considerable bantering about it on the Hill. Some members even wondered out loud if parks were replacing water projects as the favorite items for politicians to take home. The bill authorized spending about $1.2 billion on more than 100 parks and preservation projects in 44 states.

The 96th Congress is showing no sign of trying to approach that record. But the House recently approved three bills authorizing about $130 million for 22 projects in 14 states. It did so without any serious floor discussion of any of the projects and after its leaders had turned aside a request from the Interior Department for a delay on the omnibus bill that involved 20 of them. A spokesman explained that the department didn't know whether to favor or oppose these projects because it hadn't reviewed all of them.

The new units that will be added to the park system if these bills become law include two new national parks, Kalaupapa in the Hawaiian Islands and Irvine Coast in Orange County, Calif.; two historical parks, one recognizing women's rights and one Chaco culture; and four historical sites honoring James A. Garfield, Georgia O'Keeffe, Martin Luther King Jr. and Mary McLeod Bethune. Land would also be added to such existing park preserves as Harpers Ferry, Monocacy Battlefield in Maryland, Richmond (Va.) Battlefield and the Lyndon B. Johnson historical site in Texas.

In addition, the bills direct the Interior Department to recommend sites for memorials to former president Gerald R. Ford and the late George Meany, to erect a plaque or monument at Assateague Island to commemorate the late Rogers C. B. Morton, and to name the water behind Norton Dam in Kansas the Keith Sebelius Lake. Mr. Sebelius, who is retiring from Congress in January, is the ranking Republican on the parks subcommittee.

These projects may—or may not—be individually worthy additions to the park system. But members of the House who voted for the bills almost 3 to 1 could hardly have known whether they were. The committee reports justifying the plans had not even been printed when the bills were up for debate.

The number of units under the control of the Park Service has increased so rapidly—10 percent since early 1977—that it is hard for anyone to keep up with them. The big ones, like those now in dispute in Alaska, receive close scrutiny. But many of the little ones do not—especially if they are tucked away in omnibus bills like that passed in 1978 and the one now pending.

The national park system shouldn't be toyed with this way. Its good parks are so exceptional that the public expects near perfection wherever that Park Service sign hangs. This reputation should not be diminished by minor additions designed mainly to spread, geographically or politically, the federal dollars spent for recreation and preservation. If the Senate applies that standard when it reviews the projects proposed recently by the House, it may—or may not—approve them. But it would be nice to know that those it approved had at least been carefully screened.

St Johnsbury Vermont

Page 4 The Caledonian-Record Sat., July 5, 1980

THE CALEDONIAN-RECORD

Irresponsible Legislation

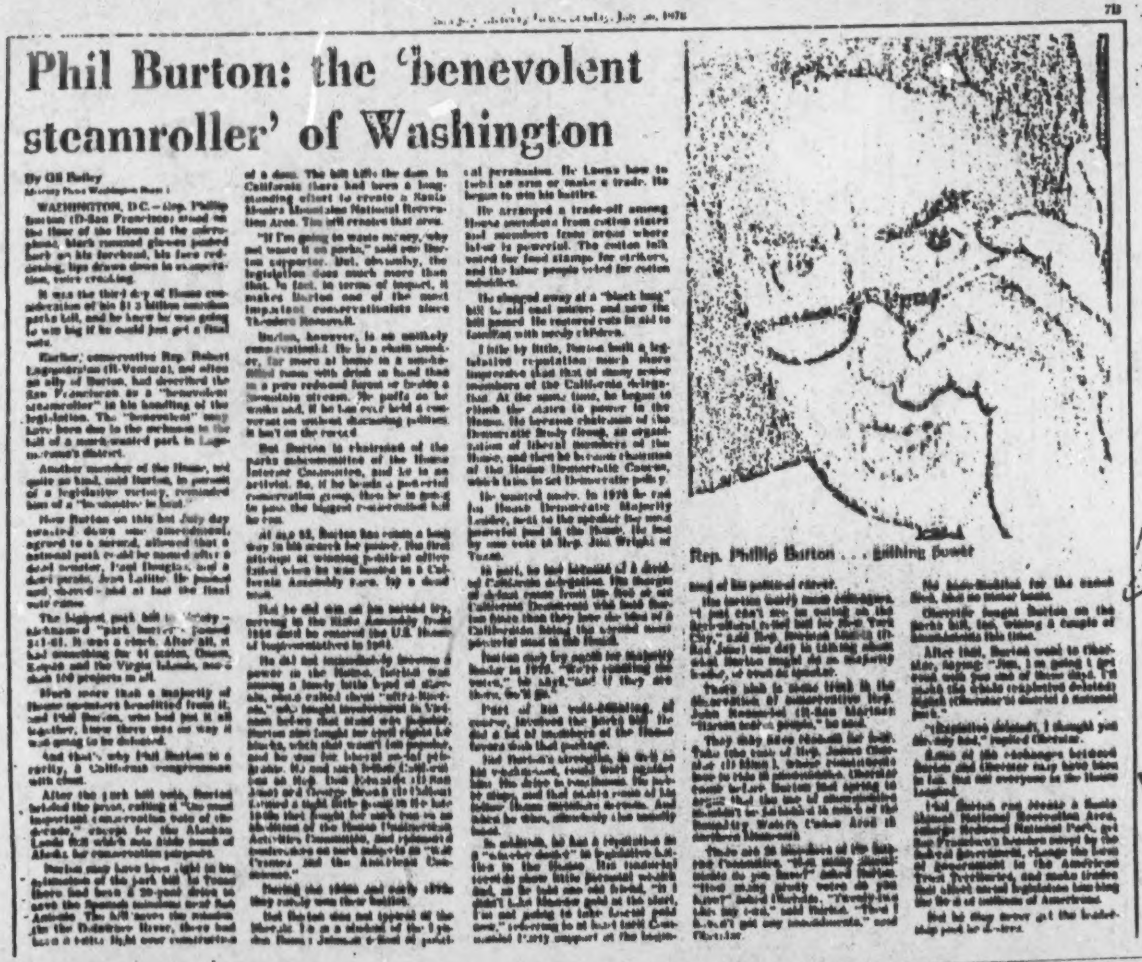
Most Vermonters probably have no idea what an in-holder is. An in-holder is a person who owns land within the boundaries of a national park, national forest, or other publicly owned tract of land. Over a million Americans fit the description of in holders, and of that million the most badly used are those whose private land lies within or adjacent to a national park.

The National Park Service has a long-standing policy about inholdings and inholders. It wants to get rid of them by all available means, and it has used some really shocking techniques to get rid of them. In the Cuyahoga Valley between Akron and Cleveland, for instance, the Park Service condemned hundreds of private homes to make a National Recreation Area. Then it let the empty homes stand there for years, while the yards and fields grew up to brush. In a few cases, it even refurbished the confiscated homes and rented them out to new tenants.

A key promoter of the Park Service and its practices is the chairman of the House Interior Committee, Rep. Philip Burton (D-Calif.). In May he introduced a bill to acquire more federal land around Lake Tahoe, on the California-Nevada border. Three days later the bill was amended in Burton's subcommittee to confiscate private homes on the California side of the lake. Two days later Burton's committee reported the bill. No copies of the bill had been made available to the 66,000 local people directly involved, and no public hearings were ever held until the bill was well out of committee and awaiting House floor action.

By the same kind of reckless procedure Burton's "Parks Omnibus Bill", affecting the property and the rights of citizens in more than a dozen parts of the country, was rushed through the House. No real public hearings were held; no notification was sent to the people in the areas affected.

This is the kind of procedure that rightfully gives the U.S. Congress a bad name. Happily, Vermont's Congressional delegation has taken pains to make sure that any legislation directly affecting Vermont lands has had full public hearings here in the State. All three of our present delegation should insist that no measure, dealing with any part of the country, be advanced until the citizens affected have had the same kind of opportunity to speak their piece that Vermonters have long demanded. And it's about time that other members of Congress told Rep. Burton that they will automatically oppose anything his committee proposes, until they are satisfied that the demands of fair play have been scrupulously observed.



[illegible] July [illegible], 1978

7B

Phil Burton: the 'benevolent steamroller' of Washington

By Gil Bailey

Rep. Phillip Burton . . . gaining power

55

About Acquiring Sweeney Ridge

Rep. Phil Burton said this week he's very optimistic that Sweeney Ridge can eventually become a part of the Golden Gate National Recreation Area.

Burton said that failure of the Interior Department to recommend Sweeney Ridge for inclusion in the national park system "won't have any impact at all on my committee and I don't think on the House."

The San Francisco Democrat said he simply "didn't take very seriously" a report to Congress last month from Secretary of Interior Cecil Andrus that held Sweeney Ridge did not meet criteria for federal acquisition.

ANDRUS SUBMITTED a list of areas which the National Park Service judged to be potential park lands; it specifically did not include Sweeney Ridge, which had been the subject of a feasibility study.

Burton, chairman of the House subcommittee on parks, said he'd heard about the report "second hand...it didn't make much of an impact. I didn't take it very seriously." He added that "three fourths of the parks bill" which passed recently didn't have the recommendation of the park service and the Interior Department.

When the letter from Andrus went to House Speaker Tip O'Neill, the director of legislation for the park service, Peter Gove, commented to the Tribune that the opinion of the professional staff was not binding on Congress. He suggested that Rep. Burton could be expected to use his recognized political influence to win committee and House approval of the acquisition of Sweeney Ridge to the GGNRA area. The Golden Gate area now extends from the north to a point just seven miles north of Sweeney Ridge; it is something less than "national park" status and would not necessarily include any roads or major public improvements.

BURTON WOULD venture no prediction on when—or precisely in what shape—the proposed attachment to the GGNRA might occur. He has before Congress a resolution proposing simply that Sweeney Ridge become a part of the GGNRA.

Approval of funding for various GGNRA and similar projects may require more time than originally hoped for, Burton said, but "I am completely optimistic about Sweeney Ridge being approved by my committee and optimistic about the House...the question is in what form and when."

"The Secretary of Interior's recommendation won't have any impact at all on my committee and I don't think on the House," he said.

Burton's response to the Tribune's questions about his reaction to Secretary Andrus' recommendations included the firmest public comment he has made about his thinking on Sweeney Ridge. During a public hearing by his subcommittee in Pacifica last July he was more reserved in his predictions.

A Management Plan
For The
Upper Mississippi River

Mississippi Headwaters Board - January 1981

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SUMMARY

Background Legislative History

On January 3, 1975, the President signed P.L. 93-621 which authorized a study of the upper 466 miles of the Mississippi River from Lake Itasca to Anoka for possible designation as a National Wild and Scenic River.

In October, 1975, the preliminary draft plan prepared by the U.S. Bureau of Outdoor Recreation (BOR) was completed, and in May, 1977, Assistant Secretary of Interior Robert Herbst submitted the study and Environmental Impact Statement (EIS) to Congress and President Carter.

On June 15, 1977,S. 1697, a bill which would designate the ten segments recommended in the BOR study, was introduced in the Senate. On October 31, 1977, H.R. 9855, which would amend the National Wild and Scenic Rivers Act to designate the Upper Mississippi, was introduced.

In January, 1978, Congressman Oberstar succeeded in amending the bill to require a more complete, specific study. The Mississippi designation provision was subsequently deleted from the Omnibus Parks and Recreation Bill passed by Congress.

In August, 1979, President Carter included the Upper Mississippi in his Environmental Message and called for a study "to determine the specific requirements for protecting the river corridor and providing public access, campgrounds and other recreational facilities . . ." He also directed the National Park Service to complete the study by April, 1980.

After concerns about this deadline were raised, the target date for completion was left open. The National Park Service proceeded with its study as directed by Congress.

The Mississippi Headwaters Board

On February 22, 1980, a joint powers agreement was signed by eight counties: Clearwater, Hubbard, Beltrami, Cass, Itasca, Aitkin, Crow Wing, and Morrison. This coalition was named the Mississippi Headwaters Board (MHB) and became the largest joint powers board of its kind in state history.

The stated purpose of the Mississippi Headwaters Board is to formulate plans for the area under its jurisdiction, and protect the Upper Mississippi River from uncontrolled and unplanned development through the preparation and adoption of a comprehensive management plan for the river and adjacent lands. This management plan will provide for the adoption of strong local zoning ordinances, recreational use of the river and adjacent public lands, donation or purchase of critical lands in the public interest and sound cooperative management of existing public lands along the River.

The MHB was formed under the authority granted in M.S.A. 471.59 referred to as the "Joint Exercise of Powers Act." This law was passed in 1943 and was modeled after the California legislation. The legislation is a general authorization to allow any local governmental units to cooperate in exercising any power held in common. The original law was amended in 1961, 1965 and most recently in 1973. The purpose and effect of these amendments was to broaden the authority for interlocal cooperation.

According to Minnesota State Planning Agency surveys of interlocal cooperation in 1965 and 1974, "over 2,000 examples of cooperation, including over 250 separate and discrete categories of local service were discovered."

In response to an inquiry by Sonja Steven, Itasca County attorney, regarding the formation and administration of the Mississippi Headwaters Board, Attorney General Warren Spannaus found the Mississippi Headwaters Board was legally constituted under Minnesota Statutes 471.59 and had the authority to pay for necessary planning, contract for services in the same manner as individual counties and review zoning decisions of the individual counties regarding the Upper Mississippi.

There are many advantages to interlocal cooperation. The most important advantages of such cooperation cited in a Minnesota State Planning Agency manual entitled "Interlocal Cooperation" include:

1. Cooperation is useful in broadening the geographical base for planning and administering governmental services and controls. Conflicting land uses, differing codes, confusing jurisdictional rules and inattention to those problems not capable of solution by one unit of government are the main criticisms of the small unit of local government.
2. Cooperation tends to enlarge the scale and administration of local services making lower unit costs possible. This is an obvious advantage to interlocal cooperation — by expanding a service area, communities can take advantage of the economies of scale that often accrue in most services.
3. Cooperation is helpful in guiding the orderly growth of an area. Planning is an especially useful example. If several units of government (including townships, municipalities, and counties) jointly plan the development of an area, the cooperating units of government can prepare for the expansion of governmental services well in advance of the time when serious problems might necessitate stopgap, less than satisfactory solutions.
4. Cooperation is flexible and versatile. One of the outstanding advantages of interlocal cooperation is its flexibility in adapting to new conditions which may develop after communities are already cooperating in a particular local governmental service. . . . Everyday problems that occur can be remedied within the practical framework of cooperation without necessitating major changes in the legal or administrative rules.
5. Flexibility of boundaries. Cooperation has the added advantage of being able to include other units of government in the agreement should they have need for the particular service.
6. Cooperation is politically feasible. Cooperation does not result in the political re-structuring of an area. No units of government are eliminated and, usually none created. Citizens still retain control over the function through their elected and appointed local governmental officials.
7. Cooperation can result in the better performance of a service. Cooperation, if properly performed, can result in the infusion of new ideas and original approaches to problem solutions that better serve the local citizen. This is no small factor in an age of complexity and citizen participation in government.

8. Cooperation protects the political identity of the community. Most persons are extremely proud and protective of their independent political existence. Although a governmental unit may lose partial control over the administration of the function in the process of cooperation, it does not give up its political identity.

The Mississippi Headwaters Board Plan

This plan describes the methods for providing interlocal management of the Upper Mississippi River to protect and enhance its unique qualities.

The plan establishes guidelines and minimum standards for cooperative local management of the upper 400 miles of the Mississippi River from Lake Itasca to the southernmost boundary of Morrison County.

Through the implementation of this plan, the local governments would undertake a sound resource management program to protect the river in three primary ways by: (1) adopting a comprehensive zoning ordinance, (2) implementing a recreation management plan to provide for recreational use of the river and adjacent public lands, and (3) establishing common policies and cooperative agreements for the improvement of existing public lands.

Specifically, interlocal river management by the three-fold approach described above would be accomplished by:

1. Zoning — A comprehensive local zoning ordinance which contains minimum standards for the use of river shoreline and a system for interlocal review of certain decisions would be adopted by the individual counties. A river management area (zoning district) would be established after public hearings are conducted. This ordinance would allow the individual counties flexibility in local administration while providing consistency among counties regarding minimum development standards.
2. Recreation Management — The plan also recommends the establishment of some new recreation sites and the rehabilitation of some existing ones. Most sites are on existing public lands, though some are proposed for purchase, if the landowners are willing to sell and financing is available. The plan highlights the diversity of recreational uses of the river for hunting, fishing, camping, ricing, boating, canoeing and many others, and recommends measures to improve these opportunities.
3. Land Management — The plan recommends the adoption of cooperative agreements between federal, state, and local units to provide common management goals for existing public lands along the river. It also recommends management policies for the retention and improvement of existing public lands along the river for fish and wildlife habitat and recreational use. Further, it recommends consolidation of public ownerships along the river through land exchanges.

The **major points** of difference between this plan and that likely to be developed by the National Park Service are that **the MHB Plan:**

1. Does not propose any new federal authority or role.
2. Relies primarily on local zoning authority and use of existing public lands and authorities to protect the river rather than relying on significant new purchases of land or interests in land.
3. Where some new purchases are recommended to provide new recreation sites or shoreland protection, it would be solely on a willing seller basis, rather than the possible use of condemnation to acquire lands or interests in lands, under the terms and conditions prescribed in the National Wild and Scenic Rivers Act.
4. Recommends the continuance and enhancement of the full range of recreational pursuits. (Note: At this time it is uncertain what specific National Park Service recommendations will be in this regard.)

Mississippi Headwaters Board Plan Advantages

This plan for interlocal management has several advantages over the National Park Service Proposal for river management. Specifically these advantages include:

1. **Cost**

   By adoption of strong local zoning ordinances, sound management of existing state and county lands, judicious purchase of lands or scenic easements from willing sellers and more use of existing opportunities for land exchanges, we believe the joint powers plan could better protect the river at a lesser cost. In addition, to buy the easements necessary to protect all the shoreline in the segments proposed for designation would be enormously costly and would entail use of condemnation authority.

2. **Responsiveness**

   Because the plan has been prepared by and for the joint powers board, it uniquely strikes the balance needed to respond to local concerns while accounting for a broader public concern. In addition, necessary changes can be made to respond to changing circumstances that will occur over time.

3. **Public Support**

   This project has already generated considerable local and extra-local support. All the various interests have assisted in formulating this plan. Many resolutions and letters of support have come from diverse groups and elected officials.

4. **Protection**

   The essential goal of the Mississippi Headwaters Board is to prepare and implement a comprehensive, interlocal plan to protect the upper 400 miles of the Mississippi River. While this plan provides for facilities and opportunities for the diverse recreational uses of the river and its adjacent lands, we are concerned about overuse that could result from federal designation. *Flowing Free*, an authoritative book on river protection, includes these comments on local and regional river programs: "On the plus side, local or regional programs, escaping the publicity that attends federal or state scenic status, are less likely to result in large increases in recreational use." The 1977 U.S. Bureau of Outdoor Recreation report on the Upper Mississippi states that a ten-fold increase in use could be expected. We believe this to be contrary to sound river protection. The increased use could, if realized, pose a significant problem to riparian owners and the quality of the resource itself.

5. **Timing**

The implementation of the joint powers plan can begin immediately. Zoning ordinances can be adopted and grant proposals can be written to apply for necessary funds. The National Park Service proposal has been discussed since 1974, the Bureau of Outdoor Recreation has done a study, the National Park Service is now doing one, and it will likely do another management study before acquisition and recreation development begins.

Response of the Department of the Interior

In August, 1980, the National Park Service released its Draft Conceptual Master Plan for the Upper Mississippi River as a proposed National Wild and Scenic River.

On August 29, however, Assistant Secretary of the Interior Robert L. Herbst sent a letter to the Mississippi Headwaters Board suggesting that the Board act to adopt certain provisions that he said "... would make the Mississippi Headwaters Board plan a strong, comprehensive mechanism for the protection and management of the river." Shortly after receiving this letter the Board voted unanimously to initiate actions, including legislative action, to follow through with the suggestions.

On October 22 the Board authorized their consultant to send a detailed response summarizing the proposed changes to the management plan to Assistant Secretary Herbst.

Assistant Secretary Herbst responded on October 30 with a letter thanking the Mississippi Headwaters Board for "... expeditiously and thoughtfully ..." responding to his letter. He indicated that the Department of the Interior was reviewing the proposed plan and would "... respond to you by November 17."

On November 26 Assistant Secretary Herbst endorsed local management of the Upper Mississippi River but pointed out some concerns he had in regard to "... potential problem areas ..." of the M.H.B. plan. He indicated that the National Park Service's Conceptual Master Plan would be "... held in abeyance ..." to allow for the successful implementation of the Mississippi Headwaters Board plan.

Board and Committee Members

This plan was prepared under the direction of the Mississippi Headwaters Board, a joint powers board composed of one county commissioner from each of the eight counties.

The Board was created under the authority and consistent with the policies set forth in M.S.A. 471.59. The board members during 1980 were:

Name: Alf Madsen (Chairman)
Address: 318 S.E. Third Avenue
Grand Rapids, MN 55744
County: Itasca

Name: Virgil Foster (Vice Chairman)
Address: Cass Lake, MN 56633
County: Cass

Name: Felix Kujawa (Secretary-Treasurer)
Address: Buckman, MN 56317
County: Morrison

Name: Donald McCollum
Address: Route 3, Box 31
Bagley, MN 56621
County: Clearwater

Name: Ervin Kahlstorf
Address: Box 35
LaPorte, MN 56461
County: Hubbard

Name: Lowell Bjella
Address: c/o Tim's
209 America
Bemidji, MN 56601
County: Beltrami

Name: L. H. "Gus" Schroeder
Address: North Star Route
Hill City, MN 55748
County: Aitkin

Name: Alvin Hauge
Address: Star Route 1
Pequot Lakes, MN 56472
County: Crow Wing

Lloyd Nesseth, Recording Secretary
Stephen Young, Attorney to the Board
Goff/Priesnitz and Associates, Inc.,
Consultants to the Board

The Board also appointed two advisory committees to advise them in the preparation of this plan. The Board wishes to express its grattitude particularly to the members of its citizens advisory committee who gave their time and expertise, without compensation, to complete this plan.

The members of these committees are:

Citizens Advisory Committee

Name: Alvin Katzenmeyer
Address: Lake Itasca, MN 56460
County: Clearwater

Name: Bert Pfeifer
Address: Lake Itasca, MN 56460
County: Clearwater

Name: Keith Butler
Address: Lake Itasca, MN 56460
County: Clearwater

Name: John Enghauser
Address: Mississippi Clean-Minnesota Green
Route 4, Box 272
Bemidji, MN 56601
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Name: Alice Dreyer
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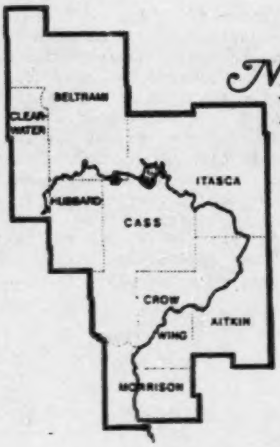
Prepar[illegible] this management plan was financed solely through lo[illegible] and private contributions.

The B[illegible]d a fund raising committee to act on its behalf i[illegible] private contributions from a wide variety of sources. [illegible] raising committee has been quite successful in [illegible] and the Board would like to express its appreciati[illegible] raising committee members are:

Mr. Harold [illegible] Chairman
State Sena[illegible] Lessard
Mr. Alvin [illegible]
Mr. Lloyd [illegible]

Final[illegible] wishes to express its sincere appreciation to tho[illegible] and organizations who contributed financially — [illegible] these expressions of support this effort would not [illegible] possible.



Mississippi Headwaters Board

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United States Department of the Interior

NATIONAL PARK SERVICE
CUYAHOGA VALLEY LAND ACQUISITION OFFICE
313 BOSTON MILLS ROAD
PENINSULA, OHIO 44264

IN REPLY REFER TO:
L1425
Sweeney:as

October 18, 1977

Memorandum

To: Ass't. Chief, Land Acquisition Division, Midwest Region

From: Land Acquisition Officer, Cuyahoga Valley National Recreation Area

On Monday morning, October 17, 1977, Mr. James Jackson and Mrs. Delores Warren came to this office to meet with me. Mr. Jackson owns Tract 120-40, Cuyahoga Valley National Recreation Area, and had received a letter from us notifying him that we wished to appraise his land. He wished to confirm that we were going to acquire his property in fee. When I confirmed this, Mr. Jackson, a leading member of one of the Associations active within the Park area, pointed out to me that Section 2(c) of Public Law 93-555 stated that improved properties shall not be acquired unless their use or threatened use would be detrimental to the Park; that he had understood as did other owners in Segment 120 that their's would be a scenic easement acquisition; that he had been in touch with Representative Seiberling and that Mr. Seiberling was furious. Mr. Jackson also stated that our letter concerning the appraisal did not give the property owners all the information that they should have. I indicated to Mr. Jackson that this office had received a directive to buy this and other tracts in Segment 120 in fee and that I would convey his objections to Acting Superintendent, Bob Byrnes. This I did.

Lather this same day a phone call came to this office for me from Representative Seiberling. I was out. Representative Seiberling called at 5:30 P. M. In a long conversation, Mr. Seiberling told me that Mr. Jackson and others had been in touch with him about fee simple acquisition in Segment 120. He was concerned that too many properties were being acquired in fee and few if any scenic easement interests were being acquired. He too reminded me about Section 2(c) of Public Law 93-555. and indicated that it was the sense of Congress that scenic easement interest acquisition should be used here whenever possible. He then complained about the bureaucratic language in our letters to these owners indicating that their properties were to be appraised. I told Mr. Seiberling that this was a standard letter used by the Park Service all over the United States. He then stated this letter and the letter sent out by Superintendent Birdsell(copy to follow) should have been couched in more informal, easier to understand language, so as to allay the fears of these landowners.

Representative Seiberling then asked about a letter he had received concerning the appraisal of Tract 116-23. I indicated to Mr. Seiberling that this was the tract of land he had sold to the Trust for Public Lands, and that the correction in our MIS system now indicated ownership. This seemed to end his interest in this particular matter.

Representative Seiberling told me then that he intended to have a meeting with Superintendent Birdsell as soon as the Superintendent returned from vacation in November. He wants me to be present at that meeting.

During the course of our conversation, Mr. Seiberling reminded me that he was the Chairman on the Committee on Oversights; that this is the committee to which we will come for additional funds for this Park.

Mr. Seiberling then asked me how we were proceeding on condemnations. I told him. He advocated more Declaration of Takings and praised the system used in the Southeast Region for the Big Cypress Swamp condemnations.

After some general exchange of pleasantries, The Representative invited me to call his offices in Akron and/or Washington about any problems which might arise.

Sincerely yours,

M J Sweeney

M. J. Sweeney
Land Acquisition Officer

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:
Memorandum

FEB 10 1982

To: Deputy Director Grier

From: Regional Director, Western Region

Subject: Issue paper on Trust for Public Land

Following our recent conversation on the non-profit status of the Trust for Public Land, I am attaching an issue paper that discusses their activities and raises a question on that status.

I am proposing that the service review this case carefully and come to a new understanding with TPL on how they will fit into our pursuit of the new Land Protection Policy.

Howard H. Chapman

Trust for Public Land
A Non-profit Corporation

The Sweeney Ridge experience by the National Park Service has caused a re-evaluation of the relationship with the Trust for Public Land.

Initially, TPL presented itself to the National Park Service as an organization that could assist the Federal Government in its land acquisition responsibilities. This was to be accomplished by being able to acquire properties that were on the market but not available to the government because of funding limitations and/or time constraints. The Nature Conservancy had offered similar capability but the Trust for Public Land indicated the willingness and capability for a far more aggressive program. Further to enhance their position, TPL also proposed that they would be able to offer savings to the Government that neither the Government nor any other third party entity could achieve. This would result from TPL purchasing properties at below appraised value and passing on some of these savings to the Government while at the same time returning to their fund the difference between their purchase and sale. This return was designed to rotate and grow as more and more properties would pass through their hands into public ownership. The savings to the Government had obvious appeal as well as their flexibility for being able to take advantage of timely property offerings.

In 1979 there was a tract slightly in excess of 1,000 acres at Point Reyes owned by R.C.A. and used as a part of their communications system. The land was a coastal property within the seashore and in what could be considered a strategic position. However, there was no threat of development and for all practical purposes RCA would have been under intense public pressure were they to ever propose changing its use. The seashore, therefore, did not see RCA as a priority property acquisition. Without consulting with the National Park Service, TPL went to New York and negotiated the purchase of the RCA tract for a reportedly large savings to the Government. While there was reported 27% public agency savings, none-the-less the National Park Service paid approximately $1,650,000 for the property that might have otherwise come at a lower figure-even as a donation with tax-write-off benefits to R.C.A. TPL appeared to be motivated by the monetary return that came to them plus a significant public relations event that promoted them as benefactor for the Government.

This was an early notable example of TPL negotiating a land purchase that placed the National Park Service in an obligatory position to purchase. TPL, by moving without consulting the Service, caused the government to be pressured to purchase lands not necessarily of high priority. When land acquisition funds were not as constrained as they are today it was more a matter of principle, but now it is a matter of grave concern and disrupt our ability to implement the new Land Protection Policy. When the government is not consulted before hand it appears that the moving force behind TPL's action is more for their benefit than that of the public. The Sweeney Ridge negotiation by TPL is the most recent example of the above and if repeated will create major distruptions in our land protection efforts. Also, this effort on the part of TPL places the NPS under a legal obligation brought about by House Report No. 97-163, dated June 25, 1981, to wit, "The Committee is concerned with the ability of Federal land agencies to honor their commitments to repurchase lands acquired and held by non-profit conservation organizations at Federal agency request. Such organizations perform a constructive service, and to the extent they can reasonably do so, the land agencies should cooperate with such organizations. The Committee expects the Secretary of Interior to repurchase lands held by non-profit organizations, provided such repurchases are not detrimental to other priorities." (Underscoring added.)

Sweeney Ridge has also focused attention on how TPL has been able to move into the appropriation process at a time when the National Park Service has other higher priority acquistions in its land acquisition program. This therefore, calls forth the question of how does a low priority property for NPS acquistion reach the attention of Congress, move into the appropriation reports of both Houses and become a part of an approved appropriation bill without lobbying effort on the part of T.P.L.? Answers began to be evident when the TPL President, Martin Rosen, is a co-sponsor for a fund raising activity in San Francisco on January 23, 1982 for Representative Les Au Coin who is a member of the House Subcommittee on Appropriations for Interior and Related Agencies. Further, TPL personnel, notably Ms. Harriet Hunt-Burgess, was in the office of Senator Hayakawa in early December 1981 when his Administrative Assistant was seeking a meeting with WASO-based land acquisition personnel fo the N.P.S. Until recently, Ms Hunt-Burgess carried the title of Project Manager and Washington Liaison for the Public Land Program of TPL. Presently she carries the title of Vice-President. In her former role she traveled frequently to Washington, D.C. and was known to maintain contact with Mr. Frederick Mohrman, staff clerk of the House Subcommittee on Appropriations as well as Mr. Donald Knowles, staff clerk for the Senate Appropriations Subcommittee on Interior. Additional contacts have been made by Ms. Hunt-Burgess with Dale Crane, Staff to the House Subcommittee on Public Lands and National Parks, Tony Bevinetto, professional staff member of the Senate Subcommittee on Public Lands and Reserved Water and Toni Williams, minority staff member of the afore-mentioned Senate Subcommittee. Ms. Hunt-Burgess also accompanied Representatives Phillip Burton, Lantos and McCloskey to a meeting with Western Region personnel of the National Park Service about the controversial appraisal of Sweeney Ridge. In addition, TPL personnel have testified at public hearings by the House Subcommittee on Public Lands and National Parks of the Committee on Interior and Insular Affairs, and also the Subcommittee on Environment, Energy and Natural Resources of the House Committee on Government Operations.

These activities of TPL personnel must be measured against what "Articles of Incorporation" of the Trust for Public Land state, to wit: Article Two, paragraph(c) "No substantial part of the activities of this corporation, however, shall consist of carrying on of propoganda, or otherwise attempting, to influence legislation, nor shall this corporation participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." Attached is a copy of the full Articles of Incorporation of the Trust for Public Land.

The above-quoted provision of the TPL charter raises a question about the activities carried on by this organization with the Congress of the United States. This leads to the belief that the organization has demonstrated a lack of discipline to an important part of its charter. And further that in their pursuit of acquisitions that have a monetary return to them, they do not evidence the public-spirited objective that first brought them into existence.

Considering the emphasis on cost effective management activities, the actions of TPL as a non-profit organization designed to offer savings to the government must be called into serious question. Finally, it would appear that the NPS should pursue its own land acquisition negotiations in order to be able to professionally address its priorities and needs to the Congress.

Attachment

Mr. **Noonan**. Thank you, Charles. Our second respondent is Mr. Paul Pritchard, president, National Parks and Conservation Association. Paul?

STATEMENT OF PAUL C. PRITCHARD, PRESIDENT, NATIONAL PARKS AND CONSERVATION ASSOCIATION

Mr. **Pritchard**. Thank you, Mr. Noonan and Senator, Mr. Reilly. We are grateful to you all for bringing together what seems to us to be one of the most impressive forums and opportunities for us to discuss these very important issues. We find this to be particularly unique in that now we have something concrete to look at, something specific, and we would like to clear our voice and specifically speak about the case studies that we have had an opportunity to review.

I must say, though, that these have been long awaited. We received them last week on Tuesday and Friday, and we have done a preliminary review of them and look forward to having more opportunity to review them.

One of the conclusions, though, that we came to in these reports, is that there is a need for periodic assessment. It is this opportunity which is presented, and we have found this very productive and we have seen that it helped to reaffirm our appreciation for the competence of the Department of Interior's personnel in terms of their commitment to doing a good job. I think that is a very important thing because they received little if any reward specifically for that sort of hard-earned effort, and there is no real incentive, as we have said.

I think second, it also reaffirms our conclusion that new techniques do exist and that they are being tried possibly not to the degree that we want or that we may have them available, but it is our feeling that the reports have at least shown that new techniques have been tried, and they will we hope continue to be, and we supported them when they are practical.

Third, we have also seen that there is a need for resources, resources that have been established, resources that are or should be there such as the land and water conservation fund, but resources which are getting little if any attention. Let me be specific and talk about the conclusions that we find in the reports. There are six major points of agreement which may surprise many of you, but we do find there are points of agreement.

First of all, we agree that land acquisition in fee is the best and it is crucial, and that seems to have been the conclusion in the Jackson Hole study, in the Chattahoochee study, and we would assume in practically every national park report.

Second, we believe and agree that land exchange is difficult as was shown in the Biscayne example. It is difficult to deal with the myriad of local, individual rules and regulations, let alone those that exist in the State and via the other Federal agency, but it is possible.

Third, we agree that if you do have land exchange, it requires up-front dollars; dollars for staff, dollars for the needed work to go forward, and that money, unfortunately, is not there; money which must be there before any meaningful land exchange program can be effectively carried out.

Fourth, we agree that zoning doesn't work. As was pointed out in the Chattahoochee and the Biscayne study again, zoning is a tool which is, of course, useful and productive in some ways, but it is not a useful technique as was pointed out in truly protecting the resources.

Fifth, we agree that there is a need to look outside the parks as was pointed out in the Channel Islands example and Biscayne again and others. There is a need to look outside and define methods for protecting the important park resources that will otherwise not be protected, and that brings us to the conclusion, No. 6.

We agree that there needs to be a Federal consistency clause that deals with the parks. These six points of agreement lead us to the very important question I think that we have to deal with, and that is the question of followthrough. What followthrough will occur? What followthrough will happen first of all to specific park sites, not just the ones that were in the case studies but also at other sites that are threatened around the Nation as was pointed out in the very important studies that have been prepared for the State of the Parks report, for example?

Second, we worry about followup when it comes to the resource, the land and water conservation funds, the staffing, the training, all these important issues. We support the report that is presented and we look forward to seeing the specific budget requests for those dollars for those areas.

Third, we would like to know how there will be comment. We think this is very important. We think it is critical that a decision-making process be open, that it be public, and that it be one that is built upon the existing congressionally authorized, congressionally supported institutions. We wonder about a Secretary's resource roundtable. We are concerned about the use of the National Park Advisory Board and other groups that exist at this time. We wonder if these are in fact transitional. We think that we have an agenda in fact. We hope that this administration finally sees that there is clearly an agenda from these studies and from the State of the Parks report. In fact, we are pleased to say that the National

Park Protection Act of 1982 seems to embody many if not all of the recommendations that have been discussed here this morning, and we look forward to the administration's support for that particular piece of legislation and other opportunities so that we can work together.

Mr. Chairman, again we thank you for this opportunity. Our testimony in full will be submitted to the committee for the record, and we look forward to other opportunities to work in this setting

[The prepared statement of Mr. Pritchard follows:]

STATEMENT OF PAUL C. PRITCHARD
PRESIDENT
NATIONAL PARKS & CONSERVATION ASSOCIATION
PRESENTED TO THE
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
U.S. SENATE

June 15, 1982

The National Parks and Conservation Association appreciates the opportunity to comment on the land acquisition case studies prepared by the Department of the Interior.

Since the majority of the case studies became available late last week, we have been able to complete only a preliminary review. Based on our initial examination, there appear to be some common themes and findings which are of importance.

1. Fee Simple Acquisition. Several of the studies note the need to acquire large portions of the areas studied in fee. In some cases, various alternatives might work such as in the Chattahoochee River National Recreation Area, but that study notes that fee acquisition is the preferred alternative. These findings are not surprising in light of purpose of parks to provide areas for public use and to ensure that they are permanently protected.

2. Alternatives to Traditional Fee Acquisition. The case studies contain a wide variety of alternatives, many of which may prove to be useful in specific situations. The Chattahoochee River NRA case study contains a brief discussion of various promising alternatives. Many of these should be examined in more detail and applied when appropriate in specific cases. To be successful, these alternatives must be used and modified as necessary to specific cases.

3. Land Exchanges. The case studies list various problems with and impediments to the use of land exchanges. Almost every conceivable problem ranging from inadequate legal authority to local government and landowner opposition is mentioned. The Chaco case study, in particular, includes some very interesting discussion of the prospects for land exchanges. The existing problems with land exchanges are compounded by the Administration's proposals to reduce the federal debt through sale of public property. Under these proposals, first priority will most likely be given to selling federal land rather than exchanging it. A difficult process may well become a nearly impossible one.

4. Land Use Controls. The studies note that zoning and other land use controls do not provide permanent protection. The Chattahoochee River NRA case study, for example, concludes (p.54): "In general, the present implementation of local zoning cannot be counted on to help protect key resources in the Chattahoochee Corridor." Even in those cases where the local governments do try to use local land use controls to help protect park resources, land owners may go to court to overturn restrictive regulations. The landowners, of course, have every right to do so and can be expected to act in their own best interests. Zoning and other regulations can be changed and, as a result, cannot be used reliably when permanent resource protection is necessary.

There are times, however, when land use regulation can be used effectively. This is especially true in park buffer areas where compatible development can occur. Given the wide range of problems in buffer areas around units of the National Park System, we believe that additional efforts should be made to work cooperatively with local officials to use compatible land use regulations in such areas.

In addition to these general comments, we have included more specific analyses of four of the case studies. These reviews provide more detail on the issues mentioned above and examine some additional issues.

RESOURCE PROTECTION CASE STUDY: BISCAYNE NATIONAL PARK

Final recommendations contained in this "study" are generally appropriate, calling for rapid acquisition of the offshore keys (55 acres), "interim" protection by strengthened regulation of the mainland shoreline (4,500 acres), and establishment of a "park protection zone" outside current park boundaries (2,500 acres).

However, these recommendations raise serious questions: Will the Administration request LWCF Funds in FY 84 to acquire the offshore keys; will local and state government agree to strengthen land use regulations; how long will "interim" protection need to last, and what is the final protection contemplated; finally, by what authority will the NPS attempt to establish a "park protection zone" outside park boundaries???

Although we tend to agree with final recommendations of the report, much of the analysis used to reach these recommendations is very shaky. For example, on page 6, the report notes that, "Congress appears to have intended prompt acquisition of land, water, or interests therein to be the tool for protecting Biscayne, but there is no evidence the alternatives were specifically considered or rejected." (emphasis added) Further, on page 7, the report states that "There is no evidence in the record that the Ragged Keys were added specifically to keep them in their natural state."

Statements such as these, throughout the report, indicate a monumental ignorance of the manner in which Congress habitually authorizes units of the National Park System, and of the history of the System itself. The very reason that the Service and System have generic, and administrative legislation is to establish the broad, philosophical basis for the national park idea. Of course Congress intended for the Ragged Keys to be kept natural, or else Congress would not have designated the area as a national park. Had development been intended, perhaps Congress would have designated the area as a national recreation area, or specifically authorized Economic Development or small business grants.

Threats to the integrity of the park's resources are well documented in the report, and merely serve to heighten the urgency already felt by local citizens who have been supporting immediate acquisition of the private lands within the park.

Our confidence in the ability of regulation to adequately protect park lands is seriously eroded by statements in the report itself. On page 29, the report notes that "The ability of regulations to stop, delay, or modify major development proposals would not, however, achieve NPS management objectives of assuring long term protection of pristine qualities of the resources or making certain areas available for public use."

Even more disturbing is the statement on page 30, that "Park managers do not currently have clear assurances of WASO and departmental support if they take strong positions in regulatory proceedings which may anger property owners or local officials. For example, current direction from WASO and region appears to emphasize caution in participation in zoning matters rather than undertaking initiatives. Recent experiences involving an air quality case have led managers to question departmental backing for their efforts to protect park resources."

Clearly, before zoning and other forms of land use regulation will ever be effective tools for land protection, the Departmental policy-makers must commit themselves to supporting this approach with their actions and not just their rhetoric.

As to land exchange as an effective tool for park land protection, the report notes that "the Southeast regional director of the GSA stated that the use of surplus property by another government agency to acquire private land by exchange is contrary to their policy." If this policy holds true nationwide, then we doubt the reliability of land exchange as an effective tool, particularly in the East where there is little BLM lands, for park protection.

The report further notes, at page 42, that "With no funding for acquisition, techniques such as donation and exchange, which require funds for appraisals, staff, and equalization payments, will not be available to the National Park Service." Here again, the Department is promoting inconsistent policies. In their zeal to halt the flow of LWCF funds, the Department may have eliminated the donation and exchange alternatives as well.

Finally, the report notes that among the Implementation Requirements for the Department, they should "develop and pursue a legislative proposal to require federal and federally assisted or permitted actions to be consistent with approved protection plans for national parks, wildlife refuges, and other areas." We heartily concur with the need for a federal consistency requirement for protection of national parks but find it curious and disturbing that the Administration has opposed such new legislative authority in its testimony opposing H.R. 5552, the Natioanl Park System Protection Act of 1982.

RESOURCE PROTECTION CASE STUDY: CHANNEL ISLANDS NATIONAL PARK

One of the initial recommendations in this case study is that the study should be initiated after or concurrent with the General Management Plan since the GMP would determine visitor use and resource management needs and the level of estate required. This would be an ideal situation. In parks where there is development pressure, it is impossible to wait on the GMP. Too many important parcels would be developed while the GMP was being prepared. This recommendation appears worthwhile at Channel Islands National Park because there are only a few landowners and none of them show any indication of developing their properties in the near future. In many other parks, however, adherence to this recommendation would result in the loss of strategic and important parcels to development.

The Channel Islands contain numerous nationally significant resources including outstanding marine resources. Even with national park designation, the establishment of a marine sanctuary, and the existence of state laws, these resources are still threatened. The study notes (p.ii): "While further data collection is required, the NPA believes certain marine resources are currently being depleted below levels of sustained yield." Regardless of the land acquisition alternative that is eventually adopted, there will most likely be continuing significant threats to these marine resources. This problem demonstrates the need to protect buffer areas around the parks more effectively. As noted in some of the other case studies, it may be necessary to create park protection zones outside existing boundaries. To protect park resources adequately, it will often be necessary to give the Park Service the ability to require consistent action by other federal and state agencies.

This case study notes that there are problems with reliance on land use controls. Park resources cannot be protected from development in the long-run simply by relying on land use controls.

There are four primary alternative protection strategies presented for this area. The first, an outer continental shelf lease royalty exchange, is an interesting idea but does not appear to provide any substantial benefit. The cost to the government would be the same as with fee acquisition. The major advantage listed in the study is that the appropriations process could be avoided. However, this would probably be more than offset by problems of obtaining Congressional support for this approach and ensuring that the exchange involved equal value.

The seconl alternative is also very interesting. A concessions reservation or leaseback could result in savings to the government. The problems with this approach are the complexity involved both with valuation of the concessions right and the competitive bidding process that would have to be followed. Further analysis of this approach should be undertaken to see if it is feasible.

The third alternative of direct purchase is the most straightforward. There would most likely be adequate funding available to purchase the Gherini property in the near future. The availability of sufficient funding to acquire the more expensive Vail property is uncertain in the next couple of years.

The last alternative, land exchange, would be difficult to complete. Four major disadvantages are listed in the study. Programs to sell federal property to reduce the federal debt will make exchanges even more difficult.

Possibly a mixture of some of the alternatives may turn out to be the best approach. The case study also notes the possible benefits of tax incentives. Together with a combination of some of the alternatives mentioned in the study, tax incentives might be used to complete acquisition of this national park.

RESOURCE PROTECTION STUDY: CHATTAHOOCHEE RIVER NATIONAL RECREATION AREA

Perhaps more than any of the other case studies, this one examines the issues of land development and land use control. The study found that large portions of the undeveloped parts of the river corridor are held by speculators and developers and that local land use controls are not sufficient to protect the area. This finding is not at all surprising since one of the reasons this areas was established by Congress was the inability of land use controls to protect it.

In each of the sites examined in this case study, fee simple acquisition is found to be the preferred alternative. It is possible that a combination of alternatives involving fee, less-than-fee, donations, local land trusts and other approaches may prove to be the most effective. Utilizing such combinations, however, can prove to be very complex and time-consuming. The study does point out the possible benefits of examining each parcel individually and tailoring the protection strategy to each specific situation. It is questionable, however, whether the National Park Service has the staff and funding to follow this approach nationwide.

The case study also examines the possible use of easements. It notes that the potential cost of purchasing easements is high in comparison to the level of protection obtained due to the inflated land values in the area. Morever, the study concludes (p.7): "Proper management and protection of the resources in an easement situation will require changes in legal authorities, resulting in greater capability for the Park Service to perform the necessary management duties on lands that the agency does not fully own." While we believe that the National Park Service and other federal agencies can make greater use of easements, they can be difficult to administer and can be very expensive to purchase in areas with high development pressure.

The need to expand the boundaries to include additional areas is also examined in this case study. Several areas with outstanding values are not in the authorized boundaries and should be added to the park. The study also notes that there are areas that are not as essential. This raises the question whether exchanges might be possible. There are other areas in addition to the Chattahoochee River NRA that could benefit from boundary additions. Immediate fiscal limitations should not preclude the possibility of enlarging parks to provide more protection and better visitor access and use.

RESOURCE PROTECTION CASE STUDY: GRAND TETON NATIONAL PARK

This case study discusses the remaining 135 private inholder tracts on a site-by-site basis, a very commendable format, but if this study becomes binding on the NPS staff which must implement it, their felxibility to adapt protection strategy to changing patterns of land use or to emergency needs could be seriously inhibited.

In addition, this plan clearly identifies the continuing need for federal funds to purchase needed private lands. In the General Recommendations of the report, on page 84, the report concludes, "an adequate source of funds should be available on a year-to-year basis (up to $2 million annually) to purchase inholdings within Grand Teton National Park on a willing-seller basis, to compensate owners when eminent domain powers must be used to prevent an adverse use, or to compensate owners in the case of hardship. These monies should come from the Land & Water Conservation Fund..." Obviously, this clearly articulated need for Grand Teton cannot be fulfilled if there is no money requested by the Administration or appropriated by the Congress.

Quite appropriately, the report notes that "Postponing acquisition of property that is appropriate for purchase only results in increased public costs and may also result in a withdrawal of a willing-seller offer." (p.80)

We strongly agree with the observation in the report that "Land protection measures for the entire Jackson Hole area, including public and private lands, must be addressed comprehensively." In fact, this approach should be utilized for the area around most of the national parks, particularly in light of the severity of the "threats facing the parks identified in the 1980 State of the Parks Report to Congress.

Perhaps of most significance in the report is the recommendation that "Specific federal legislation is needed to identify the Jackson Hole region as a national scenic area or as an area of national interest." The report notes that such designation could result in provisions for special tax incentives for private landowners to protect their lands, and that "Congress could also direct federal agencies to comply with overall protection objectives." This sort of federal consistency is urgently needed for protection of park resources from adverse actions of other federal agencies. We again note that it is curious that while several of these case studies, ordered by the Administration, have recommended federal consistency, the Administration has testified against such a new legislative authority in its statement opposing the National Park System Protection Act of 1982, H.R. 5552.

Although we agree with the report's suggestion that Kelly be designated a "developed area" - which is merely stating the obvious -

we strongly disagree with the suggestion that this area be considered a perpetual inholding. Even if it takes a long time, we would still recommend that NPS policy be to acquire all private lands withing park boundaries. In the interim, we agree that "certain federal land use and building standards... be adopted for the area." (p.50).

We also disagree with the suggestion in the report's recommendation on Area 6, the McReynold's-Thompson area, that this undeveloped property be acquired subject to a reservation of use which would allow the owner to construct a residence.

As the report notes, "The two large tracts present the most emiment threat to park values of any single inholding area." The site is highly visible and near to the main park road, and also in a main elk migration route. Any development here would be incompatible with park purposes. (p.53)

With regard to Area 12, the Wyoming state lands, we would prefer Option A, even though more total acres would be involved, since it would allow the state to consolidate its ownership of surface acres with subsurface rights it already owns. More importantly, this alternative would obviate the need for amending the Federal Land Policy and Management Act to waive the fair market value requirement. (p.64)

We are especially encouraged by the attention which the report gives to critical lands outside the park boundary, and agree with the high priority which should be given to fully protecting these lands, especially the lands at the confluence of the Snake and Gros Ventre Rivers, and the South Valley and Buffalo Valley lands.

Mr. Noonan. Our next respondent is Mr. Michael Preisnitz, vice president, Goff, Preisnitz & Associates.

STATEMENT OF MICHAEL PREISNITZ, VICE PRESIDENT, GOFF, PREISNITZ & ASSOCIATES

Mr. Preisnitz. Thank you. I would like to start by thanking the chairman, Senator Wallop, for the privilege to let me participate both in this and in the previous workshop. I would like to speak today primarily from two perspectives. One perspective is as a former assistant commissioner of the Minnesota Department of Natural Resources in charge of planning and policy, and the other is as a present member of the board of directors of the American Rivers Conservation Council and the National Trails Council.

My experience relates primarily to the use of less-than-fee acquisition alternatives, specifically scenic easements and leaseback, saleback, other alternatives, and nonfee management alternatives.

First, let me start off by saying that I think the preparation of these reports is a good first step toward analyzing some of the alternatives that could be used to provide effective, meaningful, and long-term protection to these areas.

Specifically, I would like to address areas such as national wild and scenic rivers, recreation areas and trails where not only the congressional intent but the specific legislative language in the enabling acts require or direct the managing agencies to pursue less-than-fee acquisition alternatives. Over the past few years we have found in the American Rivers Conservation Council that our staff has been in the position which they certainly would prefer not to have been in of trying to cajole, urge, or otherwise pressure reluctant agency staff on site to pursue acquisition alternatives which are clearly directed under the enabling legislation. Unlike National Parks, these areas for the most part have a legislative history that supports the concept that less-than-fee, specifically scenic, easements, will be used to protect visual corridors along rivers, trails, et cetera, and that fee will be likely used only for those public use areas. In fact, in many cases this has not occurred.

The agency pursues first and foremost acquisition of that fee title, and then and only then pursues scenic easement acquisition some time down the road. In the case of St. Croix, the fee title purchase was the primary method used on the lower St. Croix initially by the Park Service until they came in some years after the designation in 1972 and asked the Congress to raise the limit for fee title acquisition.

Some of the reports cite high costs, negative landowner attitudes, and management problems associated with scenic easements. To be sure, easements and less-than-fee alternatives are no panacea, no quick fix, but from my experience they can be used rather effectively.

One question I specifically would like to address to Mr. Davidge is: What specific steps you intend to take to insure that less-than-fee is seriously pursued by the agency; and second, what do you think that your likelihood of success is going to be in that effort given the staff attitudes toward less-than-fee alternatives, which seem to be fixed across the acquisition spectrum and the really specialists bias toward fee acquisition?

Mr. NOONAN. Ric, do you want to comment on that now?

Mr. DAVIDGE. You are referring directly to the Park Service?

Mr. PREISNITZ. Yes.

Mr. DAVIDGE. I would say in the process of the case study some of the people that I have known particularly in the acquisition section of the National Park Service, I have watched a real change in attitude.

Initially, we were challenged that it couldn't be done and it won't work. I think two of the superintendents, one at Chattahoochee and the superintendent at Channel Islands, went into this extremely skeptical, but at the end of the process they had more hope and more encouragement for doing their job faster. more cost effectively than they ever believed, and the viability of other than the fee technique was realized in their mind.

I think the point to keep in mind is that the guys that go out to buy the land are following orders, and those orders come from the resource managers, not from the realty specialists, and one of the failures in the past in my opinion, not only in the Park Service but in other agencies, is we have turned over the land acquisition plan if you will to the realty specialists and they are not resource managers. They openly admit that. The Chief of land acquisition for the Park Service consistently made that point to me—you tell me what to go out and buy, how much of it to buy, when to buy it and how to buy it, and I will do it for you. I am a technician. I am not a resource manager. And the focus that we will take specifically is the retraining and the training of resource managers in the use of alternative mechanisms of protection, and I know that we are already in the process of developing an outline of how to develop a land protection plan which will involve public participation and discussion, and out of the dialog and the debate and the discussion and the fighting, hopefully we will have a better product.

We tend to be aggressive on that. Mr. Humphrey and the Director of the Park Service are working on an almost daily basis. They will be addressing the training program, both training centers, but principally focusing on realty specialists and resource management and people that develop the plans on what to acquire, how much to acquire and how to acquire it.

Mr. NOONAN. Do you have a closing sentence or two?

Mr. PREISNITZ. That will do it.

Mr. NOONAN. The fourth and final respondent is Mr. Ron Tipton, specialist, the Wilderness Society. Ron?

STATEMENT OF RONALD J. TIPTON, NATIONAL PARKS ISSUES SPECIALIST, THE WILDERNESS SOCIETY

Mr. TIPTON. Thank you, Pat. An August 11, 1981, memo by the Director of the National Park Service to the staff described the purpose of the eight case studies that we are here to discuss today as, "to determine what other than fee simple acquisition methods are feasible to carry out the intent of Congress on currently authorized areas."

Now the answer to that problem is contained in these eight studies. A quick analysis of these studies shows two general points: One, that the review teams believe the Park Service has made generally intelligent and rational decisions in acquiring land in the eight areas under review, and two, the greater use of alternatives to fee acquisition is desirable in some cases, but it is more difficult to achieve than is commonly understood.

These studies really demonstrate conclusively that Park Service land acquisition personnel have made an honest, good-faith effort to carry out the will of Congress in the most effective and sensible way possible. There are no examples of large-scale abuse of affected property owners. In fact, where the issue is addressed, the facts are just the opposite. Let me quote from one of the principal findings of the Appalachian Trail case study which is one I am quite familiar with.

> The project has demonstrated considerable flexibility which has enabled it to achieve dramatic cost savings. This flexibility is shown in the use of alternative protection strategies, and in the low number of adverse condemnations.

In fact, it is now estimated by the study that the entire trail corridor can be protected for $67 million, which is $23 million below the amount authorized by Congress.

The principal recommendation in that study is that the Park Service should continue to support the project at a level of funding adequate to complete the trail protection in a timely manner, so in other words, the Park Service has done a reasonable, appropriate, and effective job of protecting the trail.

Second, the studies indicate that less-than-fee techniques are generally not as effective as fee acquisition in protecting natural values or providing public use. Let me quote the principal finding from the statement that was put into the record by Mr. Davidge which was not quoted by this panel. This is finding 4.

> Fee acquisition generally provides the best long-term assurance of the ability to manage land in accord with NPS objectives. However, the range of less than fee acquisition must be evaluated on a case-by-case basis.

I agree with that statement. That is a good statement. The Chattahoochee River NRA case study found that fee-simple purchase was the most suitable and feasible, and those are their words, protection land technique for five key tracts that either have already been acquired or are about to be purchased or are desired to be purchased. It is the most suitable and feasible because the property owners affected generally want their property acquired in fee, and the public need for recreation and access to the river requires that a substantial interest in land be purchased.

Furthermore, both the Chattahoochee study and the Appalachian Trail study question the viability of large-scale easement purchase as an alternative. The Chattahoochee study found that, "Often the cost of a scenic easement approaches the cost of full fee acquisition of the property," and concluded that, "Only a donation of a scenic easement would be a viable option to pursue" in that case. The trail study found that 88 percent of the landowners, given the choice between fee or easement purchasement, have chosen to sell in fee. This presents an interesting dilemma. Should the Park Service force the property owners to sell easements in order to save a relatively small amount of money, or should the landowner continue to be presented with a choice between easement and fee?

In a vote last year by Secretary Watt's National Park Advisory Board on the land and water conservation fund and fee acquisition, the Board strongly endorsed continued use of fee acquisition. In a 1980 statement that I presented to the Department of Interior on Federal land acquisition, we concluded that,

> Fee acquisition should not be abandoned as a tool to achieve the desired results. Rather it should be used in conjunction with other mechanisms that insure permanent protection of the land while demonstrating sensitivity to the concerns of affected land owners.

We believe this is precisely the message conveyed by the Park Service case studies.

In conclusion, it is time to get on with the job of acquiring the backlog of those lands authorized by Congress to be included in the National Park system. We are pleased that in a recent memo dated May 4 by the Assistant Secretary for Policy, Budget and Administration, Robin West, to Secretary Watt the recommendation was that "Consideration for fiscal year 1984 acquisition funding be given to the case study units."

It is about time this administration's ill-advised moratorium on new acquisition be terminated. Let me make one specific comment about one of the case studies presented today, the Channel Islands case study.

One of the principal alternatives suggested is awarding a lease to a lessee as an incentive, and then allowing them to pay for the lease by acquiring land in the Channel Islands Park. That is perfectly acceptable if Congress deems that that is the way we have to go. I don't see any advantages in that. The advantage mentioned in the case study is it would preclude the need to appropriate acquisition funds in land and water conservation funds.

That is true. It would not save the taxpayer any money. It would be taking away revenue received in order to buy land rather than appropriating money which is set aside for that purpose. Thus I think when we are looking at alternative techniques we ought to look at those that would be effective in both the technical sense and in saving money.

Thank you.

[The prepared statement of Mr. Tipton follows:]

THE WILDERNESS SOCIETY

FOUNDED IN 1935

STATEMENT OF RESPONSE TO DEPARTMENT OF INTERIOR PRESENTATION OF NATIONAL PARK SERVICE CASE STUDIES

June 15, 1982

RONALD J. TIPTON
NATIONAL PARKS ISSUES SPECIALIST
THE WILDERNESS SOCIETY

PRESENTED TO SENATE PUBLIC LANDS AND RESERVED WATER RIGHTS SUBCOMMITTEE

An August 11, 1981 memo by the Director of the National Park Service described the purpose of the eight case studies of National Park Service land acquisition projects "to determine what other than fee simple acquisition methods are feasible to carry out the intent of Congress on currently authorized areas...."

The answer to this question is contained in the eight case studies recently completed by the Department of the Interior. Unfortunately, those studies were not made available to me until last Friday afternoon, despite the fact that some were completed as early as March and they were promised to be available "after April 12, 1982" in a March Federal Register notice on use of the federal portion of the Land and Water Conservation Fund. However, from a quick analysis of the studies, it is apparent that (1) the review teams believe the Park Service has made intelligent and rational decisions in acquiring land in the eight areas under review; and (2) greater use of alternatives to fee acquisition is desirable in some cases, but is more difficult to achieve than is commonly understood.

These case studies demonstrate conclusively that Park Service land acquisition personnel have made an honest, good-faith effort to carry out the will of Congress in the most effective and sensible way possible. There is no evidence of large-scale abuse of affected property owners; in fact, the facts are just the opposite. For example, the Appalachian Trail case study found that "the project has demonstrated considerable flexibility, which has enabled it to achieve dramatic cost savings. This flexibility is shown in the use of alternative protection strategies and in the low number of adverse condemnations." In fact, it is now estimated that the entire Trail corridor can be protected for $67,000,000, or $23,000,000 below the authorized acquisition ceiling.

Secondly, the studies indicate that less-than-fee techniques are generally not as effective as fee acquisition in protecting natural values or providing for public use. The Chattahoochee River National Recreation Area case study found that fee simple purchase was the most suitable and feasible land protection technique for five key tracts that either have been acquired or are desired to be purchased. This is because the property owners affected generally want their property acquired in fee, and the public need for recreation and access to the river requires that a substantial interest in land be purchased.

Furthermore, both the Chattahoochee and Appalachian Trail studies question the viability of large-scale easement purchase as an alternative to fee acquisition. The Chattachoochee study found that "often the cost of a scenic easement approaches the cost of full fee acquisition of the property," and concluded that only "a donation of a scenic easement would be a viable option to pursue." The Appalachian Trail study found 88 percent of landowners, given the choice between fee or easement acquisition, have chosen to sell in fee. This presents an interesting dilemma: should the Park Service force property owners to sell easements in order to save a relatively small amount of money, or should the landowner continue to be presented a choice between easement and fee?

Last year Secretary Watt's National Parks Advisory Board strongly endorsed continued use of fee acquisition by the National Park Service. In a 1980 statement I presented to the Department of the Interior on federal land acquisition, The Wilderness Society concluded that "fee acquisition should not be abandoned as a tool to achieve the desired results; rather, it should be used in conjunction with other mechanisms that ensure permanent protection of the land while demonstrating sensitivity to the concerns of affected landowners." We believe this is precisely the message conveyed by the eight Park Service case studies.

In conclusion, it is time to get on with the job of acquiring the backlog of those lands authorized to be included in the national park system. We are pleased that in a May 4, 1982 memo Assistant Secretary for Policy, Budget and Administration, Robin West, recommended to Secretary Watt that "consideration for FY'84 acquisition funding be given to the case study units." It is about time this Administration's ill-advised moratorium on new acquisition be terminated.

Mr. NOONAN. Thank you, Ron. Senator, do you have a comment or question at this point?

Senator WALLOP. Yes. Despite what may be desirable about continual large-scale fee acquisition from the standpoint of the resource, what may be desirable and what may be possible in periods of limited budgets is something that we just simply have to come to grips with. Whatever we may want to do is a question of what we can do, and therefore my feeling is that the less than fee acquisition protection is something that we are simply going to have to pursue more aggressively and creatively than has been done to date. I am not faulting anybody's desires or efforts in that area, it is just reality.

If we want to protect it with the $1½ to $3 billion backlog, it is just not going to take place. When you have people cutting food stamps, when you have people seeking to reduce the rate of growth in retirement benefits or any of the other areas, the reality is what we are dealing with and the whole purpose of these hearings is to find other means or additional means. I don't think there is any thought in here that anybody, including myself, is abandoning the idea of fee acquisition. However, to the extent possible, we should seek to achieve the protection of this country's treasures with other means that are less costly. I don't think because we used to do it one way is a good enough reason to ignore new options.

Mr. NOONAN. Thank you very much, Senator. Bill, do you have a question at this time?

Mr. REILLY. Yes. Following up on that comment, I think that this is probably one of the most ambitious efforts ever to try to get at some of the questions surrounding the usefulness of less than fee acquisition, and I think it would be very unfortunate if we didn't pursue this to the end and really try to answer some of the long-standing doubts that people have had about them.

I would like to focus particularly on two questions. I think they are very basic, raised by Ron Tipton, and one of them concerns this question of the cost of a scenic easement approach versus the cost of full fee acquisition. Mr. Tipton refers to the Appalachian Trail and Chattahoochee study, and the Chattahoochee study concluded that the cost of the scenic easement would be very near the cost of a full fee in that case.

That has been claimed in any number of instances around the country with respect to National Park units. At the last workshop we had here we heard Joe Petrillo from the California Coastal Conservancy deal with just that question, and you remember he said it is a question of order and technique. If you acquire lands in full fee, placed easement or the restriction on it to protect its resource values, and then sell it subject to that restriction, you will discover a substantial interest in the value of that property even subject to the restriction.

If you go about it the other way and you condemn some kind of easement or restricted use, you will find the opposite. You will find you are paying very close to the full value to do that. It is simply a consequence of the way we think about property.

Do you have any answers to that kind of question? Are you trying any of the techniques that Mr. Petrillo has found so useful in California in these studies?

Mr. **Davidge**. Mr. Reilly, probably one of the best examples of that question of acquiring rights to scenic easement is the legislative taking of scenic easement at Piscataway. The value of those easements compared to fee simple value is very close, but the bottom line is what do we want to protect? The question is do we need to own this property in fee to protect the individual resource, for example, or do we need to only protect or constrain the development opportunities there? There are all sorts of techniques to get to that point.

Mr. **Reilly**. Don't you think, you concede that the cost of easement of the less than fee is close to the cost of the fee, then you will undermine significantly the advantage of taking into account what has already been conceded, that fee is simpler to manage consistent with National Parks.

Mr. **Davidge**. If you approach it that way, but as you stated, you can purchase the property in fee that dedicates the deed to restricted development rights, and put it back on the market and often, as many private landowners are finding across the country today, they make money on the deal.

Mr. **Reilly**. Has that been tried? Have you tried it in any of these studies?

Mr. **Davidge**. The problem, frankly, is under this existing law there is no incentive in our opinion for particularly the Park Service managers to use that technique because there is a restriction on sell-back of 2 years within the Land and Water Conservation Fund law, and even if they do make money if you will, the money is returned to the Treasury or the Land and Water Conservation Fund. It does not stay within the appropriations for the unit, so there is a drawdown in the appropriation for acquisition. There is no incentive for him to use that money basically to turn it around if you will.

Another excellent example is the Philadelphia Conservationists, who did an excellent job up in Pennsylvania using the same kind of technique as the Santa Monica Mountains Conservancy. It is a quasi-State agency. They are involved with purchase of property, the planning of those properties for compatible use, and reselling the property and making sufficient money within their revolving fund to continue the program.

As I said, right now there is no incentive for Department managers to use that technique because he loses the money out of his appropriation.

Senator **WALLOP**. Do we need legislative flexibility to permit that to be tried even if we did a pilot project in one particular system or park?

Mr. **DAVIDGE**. One of the recommendations in a number of ease studies, Mr. Chairman, is to do exactly that.

Mr. **REILLY**. Could I ask a second question? Mr. Tipton's remark, as taken from the Appalachian Trail study, was that 88 percent of landowners given the choice between fee and easement acquisition have chosen to sell in fee. Is that choice consistent throughout the case study areas "or" is it confined to Appalachian Trail?

Mr. **DAVIDGE**. The problem, quite frankly, is that the history of the easement has not been specifically tailored to the particular property under discussion. We have something called the schedule B1 easement which is the standard form, and things are presented to the landowner, and in a way that they didn't even know what they were giving away. It is a frightening proposal when you list down that easement, that landowner sees he is not going to be able to plant geraniums on his property. The key use of easements, be they donated—and there is no reason why they can't be donated if the people are put in a sufficient tax situation that becomes attractive.

In fact, we have a very active program through a series of telegrams from Mr. Cushman's organization, people say we want to donate scenic easements for nothing. You have got to tailor the easement to the particular property at hand, and the application of a form easement just does not work, and one of the things that we have learned out of the case study process is not only do each of these unique, recognized by Congress as unique, not only do they have to be protected in their own way and own mechanisms, but each property, each tract involved has to be looked at as an independent individual situation, and the tools to protect that tract, be they direct purchase or other, have to be designed to do the job.

Mr. **NOONAN**. Thank you. I would like to ask respondents if they have any questions they would like to ask the panelists? I request they be to the point.

Mr. **PRITCHARD**. I would like to raise a point in response in part to the Senator's concern, and also ask a question in that. It seems to us that one of the major reasons why we are concerned about other alternatives other than acquisition is that, for example, in some of the examples you have just now given such as Piscataway, we really have never done an inventory and so we are concerned about the fact that in some areas like even Yellowstone in your State and others there has never been an inventory of archeological or natural or cultural resources. That is one of the reasons why we are concerned when we don't acquire things. We don't know really what we are giving up, and so I would ask the question, therefore, if I might, Mr. Davidge, what effort would be done to request sufficient funding to do the natural and cultural inventories that need to be done in these areas that might give us a greater sense of confidence, give the American people a greater sense of confidence that we don't need to own all the rights to the land?

Mr. DAVIDGE. Your example may turn my mind to the wrong direction. I don't know, but each general management plan has an inventory and a strategy for protecting natural and cultural and archeologic resources. The laws, in particularly the amendments of the Historic Preservation Act, direct as a matter of law these agencies to identify and protect the resources.

It is my experience in general management plans particularly, in the resource, and development plans of each of these units in which these resources are identified. Now I will certainly not go so far as to say we don't need to know more about what we are supposed to be protecting. We have been involved closely in serious resource problems in some parks, and the frustrating part of this issue is that we just don't know enough about the resources. In fact, we hardly know anything about some of these resources, and one of the things that we are discussing now, looking forward to the next budget cycle, is the commitment to do an inventory and analysis and design protection strategies for these critical natural resources. If you ain't got nothing there to look at, nobody is going to go.

Mr. NOONAN. Charles.

Mr. CUSHMAN. Two things—Mr. Tipton said the National Park Advisory Board did not recommend the second use fee title. They recommended to pass a committee report on to the Secretary which is their duty with no specific recommendation.

Second, I would like to ask Mr. Preisnitz if he would, regarding Mr. Reilly's question regarding the 88 percent fee versus 12 percent easement, how you feel about whether they made a real effort to use easements there?

Mr. PREISNITZ. Well, I can't speculate or don't want to speculate on what kind of effort was made other than to say it has been and it is totally contrary to the experience we had in purchasing easements.

For example the State was buying easements in roughly 23 miles of the Kettle River, a tributary of the upper St. Croix, however, that is the same area that the National Park Service was authorized to buy fee and easements. All but three landowners approached to sell easement, sold them, and the State of Minnesota at the time did not even have condemnation authority for either fee or easement, so it wasn't a matter of threatening. I think in these areas where they are not under considerable development pressure there are particular opportunities for savings both in the purchase price of an easement versus fee, and to the landowner for the sale of those easements.

If the owner does not intend to develop the property, an easement basically is paying him to leave it the way it is in perpetuity, and it is binding on heirs, successors as the attorneys say, but nonetheless, for that landowner it is often very consistent with their objectives for the property. Thus, what it amounts to is we had most of these people asking us, by God, how is this money being used? Why are you paying it? This is a windfall. We weren't going to do anything with the property anyway except leave it essentially the way it is. We like it the way it is. The costs in that area were roughly 30 to 35 percent of fee. We have had them on the river corridor project as low as 15 percent, and in an urban area I would concur the cost is much higher, closer to fee, but I think one other point has to be mentioned in this discussion of easement.

It is not just a matter of initial purchase price because the costs don't end there. What is the cost to maintain fee areas over the long haul? It is tremendous and growing. Costs of easements we have found, easement areas, are less costly, not more costly, to maintain and enforce.

Mr. NOONAN. Thank you. I suspect this debate on easement versus fee could go on. From my own experience, there seem to be two variables involved. The first is the public use envisioned. If we are talking about heavy public use area, the landowner is probably going to want to sell the fee. If we are talking about a scenic area, the easement is probably going to be more palatable.

Third, the whole clarification of the easement writeoff situation which is now being questioned by the Treasury Department is a very important subject which we will discuss this afternoon.

Are there any additional questions that respondents have at this time?

Mr. TIPTON. I just have a comment to followup on the question about problems with limitations on purchase and sell-back. There is a bill that passed the house 2 weeks ago, H.R. 261, an amendment to the National Scenic Trails Act, which would provide a rather innovative and exciting opportunity to use this technique on units in the National Scenic Trail System.

The problem you have is that the Government agency sometimes has to purchase an entire tract in order to protect the trail corridor because the landowner does not want to sever it.

These amendments would allow units of the National Scenic Trail System where land acquisition is already authorized when they purchase a property which includes a portion of land that is not within the corridor that doesn't need to be owned by the Federal Government, to sell that portion to landowners and then retain the money received for use with that particular project. I think this is a good example of one where we could try it.

Mr. DAVIDGE. Mr. Noonan, if I may, one of the problems of the use of easement in the acquisition program, particularly with the National Park Service, has been the policy that has been around of following rather than being in front of the cement truck. If you are following the cement truck, the value of that development is much greater than if you are in front of the cement truck, and you acquire those development rights before it hits there.

One of the things that we hoped this policy would do, and I think it does, is put us in a position of identifying the level of interest necessary to be protected, acquiring it quickly, getting it done, so you have got a manageable unit, and then wait for the cement truck. He is not going to show up.

Mr. **McIntosh**. I think the record of this discussion should include the fact that given the newness, and it is a relative term, but the Park Service has 100 years of experience in managing areas. Basically that is in fee simple, and the management of an area that you don't own in fee simple is completely different. Until that is fully recognized and the capability of the park superintendents and managers is brought up to speed in terms of dealing with problems of less than fee, dealing with problems of local, State and local—land use regulations and zoning ordinances and so on, we are going to be a step behind in initiative to protect the resource through a combination of tools.

If we can bring the manager up to the adequate skill and resources necessary to do that job, I think we will find a lot of internal resistance in the Park Service eroding away.

Mr. **Noonan**. Charles?

Mr. **Cushman**. Just a quick question for Mr. Preisnitz—how many miles of trails were preserved in Minnesota and what was the cost, how much of it was in new acreage and how much of it was easement?

Mr. **Preisnitz**. I am supposed to give a quick answer to that one?

Mr. **Noonan**. Yes.

Mr. **Preisnitz**. Basically through a program called grant and aid, using both leases and easements and volunteer clubs to go out and negotiate the leases and easements, there are roughly 6,000 miles in that system, and the leases, easements basically were just $1. That is for the consigning, other valuable considerations, meaning they were donated leases, and those trails they are out there and being used.

Mr. **Noonan**. Do we have questions from the audience of the panelists for the respondents at this time?

Ms. **Merit**. I am Lorraine Merit. I am from the Olympic area of Washington State and a member of the Governor's Rural Conference.

One of the concerns we have about park acquisition with the fee, is that buying in fee does damage and it tears down the community because pretty soon it sort of checkerboards the towns or the area, and the people move away and yet we have to provide services for all the people that are left. My question is, How are you addressing that?

Mr. **Noonan**. Ric, would you like to respond, or one of your associates?

Mr. **Davidge**. One of the things that Lorraine identified is a principal component of policy, and is going to require greater attention in the future. In fact, we are talking to Pennsylvania and some universities in Michigan and some universities in California about addressing the social, cultural, socioeconomic impact of regulatory programs, particularly in communities which find themselves, in my opinion, unfortunately within the boundaries of these Federal areas.

A checkerboard acquisition program does a number of things. It costs us a lot of gnashing of the teeth of the community and lowers the income to the local community to provide services, and we find ourselves in a number of areas such as the Chattahoochee River or Delaware Water Gap, for example, where we have a lot of people out on properties and the local community refusing to provide services because they have no tax base, and the Federal Government finds itself in the position of collecting garbage and doing all sorts of things which are really the jurisdictions' responsibilities.

We hope to be able to address an analysis to those components of the land protection plans, an assessment if you will of the social, cultural, economic impact of these mechanisms so that the decisionmakers or the resource protectors will be informed of the implications of those decisions.

Mr. NOONAN. Thank you. Any additional questions fron the audience?

Mr. McFARLAND. Jim McFarland of the Office of Coastal Zone Management—I have one question and one suggestion. Tying together the number of comments on the land trusts, the experiences out in California with land trusts, they have been very positive, and I would suggest that the Department of the Interior and Park Service work into actually funding local land trusts, not things in the national land trust, but individual land trusts that are set up within park units or national recreation areas to pursue the same goals which those areas have set up.

It has been indicated to our office that a number of the methods set up in the sanctuaries are cost effective and they lead to very broad local support for the project. It kills two birds with one stone.

Additionally, the question is on the Fish and Wildlife Service, acquisitions in the Department of the Interior, do the land acquisition policies, will they apply to the Fish and Wildlife Service, and the training that will take place if you are talking about starting it in the Fish and Wildlife Service, will they be able to take advantage of that?

Mr. DAVIDGE. The Fish and Wildlife Service is probably the agency that has to change the least to implement this policy, but yes, the Fish and Wildlife Service is affected by the policy, and it is in fact already beginning to look at a number of areas and do studies on those areas to develop the land protection plan. We have a great deal of confidence in the staff of the Fish and Wildlife Service, and they will be active participants in the land policy group.

With respect to land trusts, I think another member of our team, Pete Raynor, will be participating in the panel later this afternoon on tax issues, and I think they will be discussing what we think about land trusts then.

Mr. NOONAN. Additional questions?

Mr. JARVIS. Destry Jarvis with the National Parks and Conservation Association—I would like to ask Mr. Davidge if we have any assurance that the necessary funding to implement even the case study or the policy generally will be forthcoming? In the Biscayne case study it says:

> With no funding for acquisition techniques such as donation and exchange which require funds for appraisal by staff, equalization payments will not be available to the National Park Service.

Even to utilize the alternative techniques that we have been talking about takes money, and if there is no commitment in the fiscal 1984 budget, there certainly was none in the fiscal 1983, then even those alternatives cannot be fully implemented.

To use regulations again is not a workable solution. Again in the Biscayne study, it states:

> Park managers do not currently have clear assurances of WASO and departmental support if they take strong positions in regulatory proceedings which may anger property owners or local officials. For example, current direction from the WASO region appears to emphasize caution in participation in zoning matters rather than undertaking initiatives. Recent experience involving an air quality case have led managers to question departmental backing for their efforts to protect park resources.

I submit that more is at stake than just money. More is in question than just money for fee acquisition. You need to have some money, but you need to have a commitment to carry out these alternatives as well as the old methods, the old tried and true methods of fee acquisition.

Thank you.

Mr. DAVIDGE. One of the things we have learned rather dramatically and that we all knew although it has been proven in the case studies, is that alternatives to fee simple Federal purchase are more labor intensive—no question about it, and we plan to address that. We in fact are addressing that at this time.

In addition to that, I would like to ask Mr. Iauptman to talk about our position.

Senator WALLOP. Are they more labor intensive to accomplish? Once they are there, they are not more labor intensive.

Mr. DAVIDGE. No, sir. It is more labor intensive to get it done. For instance, in exchange you not only have to do one appraisal but two. It is just more cost and labor intensive, but we believe that the investment in labor will make it more cost effective in dollar per acre protection than the alternative.

With respect to the zoning question, the position of this administration on zoning and backing up local communities in use of zoning and participation in zoning. Jack Hauptman is now the superintendent of Fire Island National Seashore which has a very active local zoning program, and the Secretary just took an action with respect to the case there, and Mr. Hauptman would like to speak to that.

Mr. HAUPTMAN. Thank you. I thought the hard questions were going to come from the other side! In establishing Fire Island National Seashore, the U.S. Congress essentially told the local government that you will develop local zoning ordinances to protect the national interest in this Fire Island National Seashore.

What happened was the town tried to do it, and the town, therefore, got in a fight with the landowner who wanted to—did not want to abide by the regulation, so it was my recommendation to Mr. Davidge and others, and it was accepted, sir, that the Department of Interior has an obligation to be a friend of the town in its local zoning fight if the Congress and the administration asked them to pass the zoning ordinance and enforce it. So as a result of that recommendation, the Secretary approved and the Department of the Interior went and pursued an amicus brief and became a friend of the court in this particular suit on Fire Island.

Mr. **Davidge**. A very important point of that is that rather than use the old way of acquisition and condemnation, we are supporting local zoning.

Mr. **Noonan**. I have a question. From what we have heard here this morning, we have heard that these are more labor intensive on the front end of the negotiation. They do require training in a broader understanding of the various techniques.

Could you utilize more funds in this program of less than fee acquisitions and protection techniques?

Mr. **Davidge**. OMB is looking right at me.

Mr. **Noonan**. Could you utilize more funds?

Mr. **Davidge**. We could utilize more funds, and what was the rest of the question? We believe that we are effectively addressing the question in the budget that is before Congress at this time, and we will also address that effectively in getting future budgets.

Mr. **Noonan**. I would say for many of us that we certainly believe you could utilize those funds. In fact, we believe they are essential if these objectives and plans are to be carried out. A lot of work has been done. A lot more work is going to be done, and unless we have the funds available, this has been a foolhardy experience in many ways.

Mr. **Davidge**. Let me point out that the case study process did not solicit an appropriation.

Mr. **Noonan**. I understand. Additional questions from the floor?

Mr. **Stargell**. Dave Stargell, Appalachian Trail Conference—first, let me comment, Ric, I was impressed by your emphasis on the need to define the area to be protected and the resource to be protected, but I was struck a little later by a comment that you made almost in passing about receipt by the National Park Service of plans offering donation and easements and so forth, and I know this is a comment that Mr. Cushman has made as well.

I know in our case along the Appalachian Trail, the Park Service has on occasion received offers of donations for easements that fell short of providing the necessary protection for the resource, and in those instances it has been the judgment, and I believe the appropriate judgment, by the supervisor and the superintendent, that because the offer was inadequate, it was rejected, and a more satisfactory answer was sought.

I wondered if you would speak to that issue? I would hope that your second comment does not cut across your first, that is, that you would not encourage superintendents to accept donations that are inadequate.

Mr. **Davidge**. Absolutely correct; thank you for your question.

Senator **Wallop**. Could I just say one thing? It is difficult for you or your people to say it, but the fact is that the National Park Service cannot advise somebody on the tax exempt status. You can advise them as to whether the easement itself is adequate protection for the resources, but you can't advise them on the tax exempt status until the Internal Revenue Service answers my damn letter, and I don't know what it takes to get a letter out of them, but more than we have done so far.

Mr. DAVIDGE. The Park Service can advise the landowner about what tax tools are available, and Mr. Preisnitz discussed this at length. Certainly it is just not appropriate for the acquisition office of the National Park Service to try to be a tax attorney and develop a tax package. But back to the question from Appalachian Trail, it is always easy to offer to donate something, but when you negotiate the particulars, sometimes you find out you may want to donate more than what you wanted to donate.

We are encouraged that people are willing to donate and sit down and talk about it, but the agencies have got to be in a position to be willing to craft attachments on deeds that protect only that interest that is necessary. To ask people to give up an agricultural grazing right on the side of the Appalachian Trail doesn't make any sense, but it raises expectations, and someone might say, "Gee, maybe I could have done that." I can assess the value of that. They need to sit down across the table and be creative, and the bottom line is what needs to be protected, and that is what we have got to focus on.

Mr. NOONAN. I would like to make a comment on the Senator's point, and that is that one of the inhibitions to gift or easement is not knowing what the value of that gift is going to be until IRS sends a letter. There is a provision in the Tax Code, however, that if the gift is in the national interest, an advanced ruling can be made. What we need is some effort that is with the Internal Revenue Service to take that into consideration and set up a process for these advanced rulings before the gift is made. I think we will see a lot more gifts and a more streamlined process.

Is there a final question from the audience?

Mr. BERRY. Pat Berry, National Park Association—a couple of panelists spoke to what I sensed was a lessening of State interest in an area once the Federal agency had come in. The Chattahoochee was specifically mentioned.

Clearly the States are undergoing a lot of political and fiscal evolution at this time as well. Could any of the panelists on this side or any panelist address what they think the Federal/State relations ought to be and what initiatives if any Interior is taking to show up the other types of participants in resource protection strategies?

Mr. DAVIDGE. I think one of the keys in the Chattahoochee study was the identification of how many players have to be willing and able—those are two important qualifiers, willing and able—over the long term to directly participate in the protection and management of an area.

The National Park Service needs to be a good neighbor. So do the people on the other side of the line. We have seen in a number of cases where it works effectively. The State and local government, local land trusts, environmental organizations, work to formalize a cooperative agreement to jointly manage a unit because the local government, certainly the local people, will benefit economically from the recreational use of the area, and the Nation will benefit from the protection of the resource.

Bob, you might want to say something about the Chattahoochee situation.

Mr. McINTOSH. Well, I think your instruction was correct, Ric. I think the dream started maybe in the late 1960's, but the evolution of how the Chattahoochee could be protected, obviously in the early days, involved a strong role and responsibility at the State level, but even more importantly, at the county level, where the Georgia Constitution allows local regulations in zoning. Once the Park Service came in and had the acquisition program underway, there was reluctance at the local level, I think, largely to enforce some of these regulations, so one of the problems we addressed there was the lack of—while the laws may be on the book—there was a lack of performance standard adequate to keep the excess runoff from carrying heavy silt down into the river, and the stories go on and on, and until that is brought up to speed, no matter how much land we buy down there, it isn't going to make—really in looking at the whole river corridor as a special resource—it isn't going to make that much difference because once you get silting and intensive development and erosion gullies creating canyons along the corridor valley, the effort is not worthwhile.

Mr. DAVIDGE. One of the reasons, if you will, that those kind o situations happen is because of the lack of instititionalized cooperation. I serve as the Federal representative on the Pinelands Commission, and one of the major things of that commission is the institionalized cooperation through the formulation of regional commissions that forces up front and continuing cooperation both in money and in other resources.

Mr. NOONAN. Thank you, Ric. Could we ask that the Department might submit for the record a list of the legislative problems and the changes that you all envision or would see necessary as part of this land protection technique program?

Mr. DAVIDGE. We do that in the case study. We do have a summary that will be published on the 21st and I expect that one of the attachments to that summary will be a list of the additional hurdles that need to be set aside to allow us to do the job.

Mr. NOONAN. If you could speak relative to legislative and administrative cases, it will be extremely helpful.

We have begun a dialog this morning and you can see it is far ranging, quite complex, but involves, really involves the partnership effort. We will be getting into more detailed discussions on techniques and ideas and concepts later this morning and this afternoon.

I would like now to thank everyone for their attention and also to suggest a 4-minute break, and we will reconvene. Thank you.

[Whereupon, a brief recess was taken.]

Mr. NOONAN. Our second panel this morning is titled land exchanges—in the field experience. We are fortunate to have with us four individuals representing the four Federal land resource management agencies who have had considerable expertise in this area and are career professionals.

The first panelist is Mr. Vernon Lindholm. I should add each panelist will have 7 minutes for his remarks. The first panelist is Mr. Vern Lindholm, Director of the Lands Staff, U.S. Forest Service. Vern?

STATEMENT OF VERNON V. LINDHOLM, ASSISTANT DIRECTOR OF LANDS, U.S. FOREST SERVICE

Mr. LINDHOLM. The first thing that I will correct is that I am an Assistant Director. Ted Hall appreciates being called the Director.

I appreciate the opportunity to be at this workshop to discuss our land exchange program to improve the management and protection of the resources within the national forest system.

For the period of time 1970 to 1980, the Forest Service had 1,492 land exchanges involving 805,000 acres of land coming to the United States in exchange for 510,000 acres going to the private sector and to States. The value of these lands were $330 million on each side, for a total of $660 million. During this period of time we estimate that the people in the field were working on 1600 land exchanges, 108 of which were dropped for various reasons, some of these being title problems on the lands being offered to the United States, differences in appraised values, public objections to the disposal of Federal land in the area, and conflict with the laws involving cultural resources, wetlands and endangered species.

In the year 1981, 106 land exchanges were approved which will convey 106,000 acres of land to the United States in exchange for 65,000 acres of national forest system lands. This is the largest exchange program in the Forest Service since 1966. The cost of the program that year is $7.6 million. Changing the national forest landownership pattern through land exchange is a cost-effective landownership adjustment tool benefiting both the public and the non-Federal land owner, while minimizing the impact on the Federal budget. Exchanges improve national forest land ownership patterns, thereby helping to reduce management costs, facilitate protection, development and management of national forest lands and adjacent non-Federal lands.

All exchanges are made on a willing owner basis. Land exchanges in the western part of the United States are primarily large and are with the State and local governments, railroads, timber and mining companies, and large landowners or ranchers.

Exchanges in the Eastern United States tend to be smaller and with individual property owners. Through the exchange program, cost savings are realized in resource administration, location and maintenance of property boundaries, issuance of special use permits, and resolution of claims and trespasses and other problems associated with intermingled ownership.

To purchase the lands that were approved for acquisition by exchange in 1981 would have cost the Government $74.4 million for land payments, administrative costs, and relocation payments. These exchanges will result in the reduction of 1,000 miles of national forest property line, 1,481 property corners, and will result in a savings of $5.2 million in these programs. In addition, there will be a reduction of 224 special use permits, rights-of-way needed, and trespass cases solved. For this we estimated an additional savings of $2.2 million.

There will be a net gain of 1,000-plus acres of flood plain and wetlands, 455 acres of critical habitat for threatened and endangered species, 6 cultural resource sites, 538 acres of high-quality visual areas, and an additional capacity for recreation visits of 4,271 visitor days.

Nevertheless, exchanges involve administrative costs to prepare, to negotiate, and to process. It is difficult to estimate the costs per exchange on a yearly basis because they take more than a year in many cases. In fiscal years 1978 to 1981, the average cost of all work on exchanges was around $51,000 per completed case, at a cost of $83 per acre. Exchange costs include the real property appraisal to insure the values are equal, or can be equalized with cash payment of up to 25 percent of the value of the Federal lands.

In fiscal year 1981, the cash equalization payments were about 2 percent of the total values of lands exchanged. Exchange costs also include preparation of environmental assessments, environmental statements where necessary. There are many things that must be done, including publication in local newspapers of the lands involved in the exchange, notification of the State clearinghouses in accordance with OMB Circular A-95, notification of county governments, congressional delegations, and public hearing if necessary.

EA must consider the impact on national historic preservation, cultural resources, endangered species, wetlands, prime farmlands, rangelands, timberlands, mineral, geothermal resources, and county receipts. Adjacent landowners are also considered including the impact on the permittee, by the production of resource models and the prospective change in management costs to produce goods and services on both the public and non-Federal lands.

Exchanges are also subject to administrative review or appeal rights. An average of two exchanges per year go the appeal route before a decision is made to continue with a case or drop it. In addition, all Weeks Law exchange cases above $25,000 must be submitted to the Senate Committee on Agriculture, Nutrition and Forestry, and the House Committee on Agriculture for a 30-day oversight review before they can be completed. The processing of these cases being transmitted to the Hill through the Secretary's office adds about 2 months to the length of a case.

This concludes my prepared statement as to our experience on exchanges. They are not easy. They are difficult and frustrating to make, but they are worthwhile.

Mr. NOONAN. Thank you, Vern. I note also that you have with your testimony for the record two case studies which we appreciate also, and I assume the others will as well.

[The prepared statement of Mr. Lindholm follows:]

STATEMENT OF
VERNON V. LINDHOLM, ASSISTANT DIRECTOR OF LANDS
FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

BEFORE THE PUBLIC LANDS AND RESERVED WATER SUBCOMMITTEE OF
THE U.S. SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Workshop on Land Protection and Management
June 14 and 15, 1982

I appreciate the opportunity to appear at this workshop to discuss our experiences in using land exchanges to improve management and protection of resources within the National Forest System.

From FY 1970 through FY 1980 the Forest Service completed 1,492 land exchanges in which the Government received 805,348 acres in exchange for 510,328 acres. The total value of the properties was approximately $330 million on both sides.

During this period we estimate a total of 1,600 exchanges were attempted, 1,492 completed and 108 dropped. The primary reasons for failure of exchanges are title problems on the nonfederal land, differences in appraised value estimates, public objections to disposal of the existing Federal land, and exchange proposals that conflict with requirements of law (cultural resources, endangered species, flood plain and wetlands, etc.).

In Fy 1981, 160 land exchanges were approved that will convey 106,015 acres of nonfederal land to the United States in exchange for 65,371 acres of National Forest System (NFS) land, or a net increase of 40,644 acres. This is the largest exchange program since 1966. The cost of the program was $7.6 million.

Changing the NFS landownership pattern through land exchange is a cost effective landownership adjustment tool benefiting both the public and nonfederal landowners, while minimizing the impact on the Federal budget. Exchanges improve the NFS landownership pattern thereby helping to reduce management costs, to facilitate protection, development and management of the NFS and adjacent nonfederal lands, and to increase the production of resource commodities. All exchanges are made with willing owners.

Land exchanges in the Western States generally involve large exchanges with State and local governments, railroads, timber and mining companies, and ranchers. The properties often involve alternate "checkerboard" landownership patterns resulting from grants of 100 years ago. Exchanges in Eastern States are more often with individual landowners. Many exchanges assist local communities by making Federal land adjacent to expanding communities available for development.

Through the exchange program cost savings are realized in resource administration, road management, location and maintenance of property boundaries, issuance of special use permits, resolution of claims and trespasses, and other problems associated with fragmented ownership patterns.

To purchase the needed lands in the approved FY 1981 land exchanges would have cost $74.4 million for land payments, administrative costs, and relocation payments. These exchanges will result in a reduction of 1,034 miles of National Forest property line and 1,481 property corners, which will result in a savings of $5.2 million. In addition, there will be a reduction of 224 special use permits, rights-of-way needed, and trespass cases solved resulting in an additional $2.2 million savings. There was a net gain of 1,039 acres of flood plain and wetlands, 455.37 acres of critical habitat for threatened and endangered species, six cultural resource sites, 5,388 acres of high visual quality and an additional capacity for 4,271 visitor-days of recreation use resulting from these exchanges.

Nevertheless, exchanges involve administrative costs to prepare, negotiate and process. It is difficult to develop costs on an annual basis as most exchanges have taken more than a year to process. For the period FY 1978-81, the average cost of all work on land exchanges was $51,200 per completed case or $83 per acre acquired.

Exchange costs include real property appraisals to insure that values are equal, or can be equalized by payment of up to 25 percent of the Federal land value. In FY 1981, cash equalization payments were less than 2 percent of the total appraised value.

Exchange costs also include preparation of an environmental assessment (EA) or in more complex cases an environmental impact statement (EIS). The environmental analysis includes public involvement, such as 4-week publication of the lands involved in the local newspapers, notification of State Clearinghouse in accordance with OMB Circular A-95, notification of county government and congressional delegation, and public hearings if necessary. The EA also includes analysis of expected impact on cultural resources (National Historic Preservation Act of 1966); the Endangered Species Act of 1973; flood plain and wetlands (E.O.s 11988 and 11990); prime farmland, rangeland, and timberland; mineral and geothermal resources; county receipts; adjacent landowners and permittees; production of resource commodities; and the prospective change in management costs to produce goods and services on both the public and non-federal lands. The analysis requires involvement and coordination of various areas of expertise. The complexity increases the costs and time to complete exchanges.

Exchanges are subject to administrative review (appeal) under 36 CFR 211.19. An average of two exchanges per year involve appeals.

In addition, all Weeks Law and related acts with a value of $25,000 or more, after approval by the Assistant Secretary for Natural Resources and Environment, must be submitted to the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Agriculture for 30-day oversight review in accordance with Sec. 17(b) of the National Forest Management Act of 1976. This includes nearly all exchanges in the East. Approval by the Assistant Secretary, coupled with 30-day oversight before the Committees, adds approximately 2 months to complete an exchange.

This concludes my statement.

TWO CASE STUDIES

Forest Service--USDA
June 1982

The following two case studies are examples of land exchanges that resulted in Federal ownership and administration of lands within a Congressionally designated area (Oregon Dunes National Recreation Area). Land exchange was chosen as the preferred alternative because it provided for conveyance of the required land to the Federal government using other Federal land in exchange rather than acquiring the land with appropriated funds. This mimimizes the impact on the Federal treasury and provides land needed for nonfederal uses.

Land exchanges generally require an initial period of negotiations to develop a viable proposal. Once tentative agreement is reached, the completion of the average exchange normally takes from 10-18 months. The time is needed to meet the requirements of various laws that ensure that the public interest is met. The two case studies took longer than 18 months to complete because they involved relatively complex timber cruise and appraisal problems as well as considerable local interest and comments.

LAND EXCHANGE CASE STUDY
FOREST SERVICE, USDA - SPARROW PACIFIC CORP. #OR-16195

In the mid-1970's representatives of Sparrow Pacific Corporation and the Forest Service began preliminary discussions about a possible land exchange. The objective was to convey Sparrow Pacific land within the Oregon Dunes National Recreation Area (ODNRA) to the United States to be administered by the Forest Service in exchange for National Forest land that could be utilized by Sparrow Pacific. P.L. 92-260 (86 Stat. 99) established the ODNRA on March 23, 1972, to be administered by the Secretary of Agriculture for outdoor recreation use as part of the Siuslaw National Forest.

The exchange was completed in 1980. The benefits of the exchange were:

(1) Federal management of an additional 591 acres within the ODNRA including 1.3 miles of Siltcoos Lake shoreline and 1.5 miles adjacent to Highway 101.

(2) A net reduction of 6 miles of National Forest property line and six property corners. This reduced administrative costs and trespass potential.

After a period of initial negotiations, a land exchange offer was made on December 2, 1975. Notice of the exchange proposal was published for four consecutive weeks in two local newspapers in October and November of 1978. County, State and congressional officials were also notified and asked for comments. Numerous State and Federal agencies also provided information that was evaluated prior to making a decision.

During the 1976-1979 period an environmental assessment was prepared to analyze the potential impact on the environment, including the socio-economic impacts. The analysis indicated there was no significant impact on the environment. The inventory included evaluation of threatened and endangered plant and animal species in accordance with the Endangered Species Act of 1973, cultural resources in accordance with the National Historic Preservation Act, flood plains and wetlands (Executive Orders 11988 and 11990), potential impacts on grazing permittees, timber production, mineral development, County receipts, recreation use, water rights, special use permittees, and other local residents. There were some objections from local governments concerning potential loss of tax base and availability of land for community expansion. However, after subsequent discussions, the local communities did not continue their objections. This is common in many land exchanges. These concerns are considered as part of the public involvement process.

The land and timber were appraised by Staff Appraiser Charles A. Orman. The appraisals were approved by the Forest Service on July 3, 1979. The appraised values were $1,647,000 for the 591 acres of Sparrow Pacific land and $1,526,000 for the 899 acres of Federal land. Section 206 of the Federal Land Policy and Management Act of 1976 (43 USC 1716) required a cash equalization payment of $121,000 to be made by the United States. The payment was made from the Land and Water Conservation Fund.

After reviewing the information, the Deputy Chief of the Forest Service signed the Decision Notice approving the exchange on August 22, 1979. After a period of time needed to prepare the title and various documents to protect the rights of existing permittees and uses, in March 1980 the deed and patent were conveyed completing the exchange.

LAND EXCHANGE CASE STUDY
FOREST SERVICE, USDA - STATE OF OREGON #OR-17306

In the mid-1970's representatives of the Oregon State Parks and the Forest Service began preliminary discussions about a possible land exchange. The objective was to convey State park land within the Oregon Dunes National Recreation Area (ODNRA) to the United States to be administered by the Forest Service in exchange for National Forest land adjacent to Devils Elbow, Washburne Memorial, and Collier State Parks, LaPine State Recreation Area, and the Beaver Marsh Roadside Rest Area. P.L. 92-260 (86 Stat. 99) established the ODNRA on March 23, 1972, to be administered by the Secretary of Agriculture for outdoor recreation use as part of the Siuslaw National Forest. It authorized the Secretary of Agriculture to acquire State land by exchange or donation.

The exchange was completed in 1981. The benefits of the exchange were:

(1) Federal management of 2,265 acres within the ODNRA bordering the Pacific Ocean for over 3 miles. The east boundary of the property is Highway 101. There is a paved road and paved parking areas along the beach.

(2) Federal management of 22.50 acres at the entrance to Lava River Caves Recreation Area on the Deschutes National Forest. The area is underlain by volcanic rocks from the eruption of Mt. Mazama, the volcanic peak ancestral to the present day Crater Lake.

(3) Acquisition of three additional parcels of 100, 7.50, and 240 acres of land adjacent to existing blocks of National Forest land.

(4) A net reduction of 14 miles of National Forest property line and 54 property corners.

(5) Elimination of six special use permits and the need to acquire three road rights-of-way.

(6) State acquisition of 1,313 acres adjacent to four State parks and one roadside rest area.

(7) Savings in administrative costs to both the Federal and State governments.

After a period of initial negotiations, a land exchange offer was made by the State on November 27, 1978. Notice of the exchange proposal was published for four consecutive weeks in six local newspapers in July and August 1979, and County, State and congressional officials were notified and asked for comments. Numerous State and Federal agencies also provided information that was evaluated prior to making a decision.

The land and timber was appraised by Benson-Stathem-Shaw Associates, a contract appraisal firm. After a thorough review, the appraisals were approved by the Forest Service on July 1, 1980. The appraised values were $2,727,600 for the State land and $2,660,700 for the Federal land. Section 206 of the Federal Land Policy and Management Act of 1976 (43 USC 1716) required a cash equalization payment of $66,900 to be made by the United States. The payment was made from the Land and Water Conservation Fund.

During the 1978-1980 period, an environmental assessment was prepared to analyze the potential impact on the environment, including the socio-economic impacts. The analysis indicated there was no significant impact on the environment. The inventory included evaluation of threatened and endangered plant and animal species in accordance with the Endangered Species Act of 1973, cultural resources in accordance with the National Historic Preservation Act, flood plains and wetlands (Executive Orders 11988 and 11990), potential impacts on grazing permittees, timber production, mineral development, County receipts, recreation use, water rights, Indian tribal rights, special use permittees, and other local residents.

After reviewing the information, the Deputy Chief of the Forest Service signed the Decision Notice approving the exchange on July 3, 1980. The Weeks Act portion of the exchange was approved by the Assistant Secretary of Agriculture on July 17, 1980, and the case was submitted to the Senate Committee on Agriculture, Nutrition and Forestry and to the House Committee on Agriculture for 30-day oversight review pursuant to Section 17(b) of the National Forest Management Act of 1976 (16 USC 521(b)).

On April 28, 1981, the State of Oregon conveyed their land to the United States. Upon completion of title acceptance, the United States conveyed the Federal land to the State on September 1, 1981.

Mr. NOONAN. Our second panelist is Mr. Dean Bibles, I believe currently still Director of Land Resources for the Bureau of Land Management, but shortly going to become director of land management for the State of Arizona.

STATEMENT OF DEAN BIBLES, ASSISTANT DIRECTOR, LAND RESOURCES, BUREAU OF LAND MANAGEMENT

Mr. BIBLES. Thank you, Pat. I appreciate the opportunity to be here today to participate in the workshop. I will try to quickly move through the part of my statement here.

Director Burford mentioned yesterday that land exchanges are a very important tool in public land management which BLM has been using for many years. Our first general exchange authority was contained in section 8 of the Taylor Grazing Act in 1934, and this was later superseded and expanded in 1976 by section 206 of the Federal Land Policy and Management Act.

During the 12-year period from 1970 to date, BLM has negotiated some 578 exchanges. Of this total, 317 were successfully completed, and 120 failed, and I might add for approximately the same reasons as Vern mentioned in his statement that the Forest Service failed, and we still have 141 in progress to date.

The Federal Land Policy and Management Act set certain basic requirements that are applied when the public lands are involved in an exchange, and every exchange must meet these criteria. One, the public interest must be well served. Two, the lands to be exchanged must be equal in value or if not equal, the values must be equalized by payment of money so long as the payment does not exceed 25 percent of the value of the lands being transferred out of Federal ownership, and three, the lands to be exchanged must be within the same State.

The public interest test must be met on a case-by-case basis. There are no general public interest criteria applicable to every exchange other than to assure that the value of the land to be acquired is at least equal to the value of the land to be transferred out of Federal ownership.

The procedures for implementing the Federal Land Policy and Management Act exchange provisions became effective April 15, 1981. These procedures are now receiving thorough and careful review with the goal of further streamlining the exchange process, and we do hope to publish some proposed amendments to our 1981 regulations later this year.

The lands that are administered by BLM include those that are in large, well-blocked areas containing small, non-Federal inholdings. We have areas that are checkerboarded with non-Federal areas, and we have scattered tracts of public lands within the large tracts of non-Federal ownership. The well-blocked areas of public lands are generally identified in land use plans for retention in Federal ownership, and public lands in these areas are not normally available for exchange.

The checkerboard areas sometimes present management problems not associated with well-blocked areas. When we refer in BLM to checkerboard areas, we are primarily talking about those that result from railroad grants made during the last century to help settle the west where every other section or 640 acres was given to the railways with the alternate sections remaining in public ownership.

Exchange can be a valuable tool in alleviating management problems due to the checkerboard pattern, and can be of benefit to the private owner as well. However, we also use other tools, including cooperative agreements, rights-of-way, leases, permits, and easements in some of these areas.

The scattered tract areas are the last most frequently identified in land use plans for disposal. They have been used extensively for exchange purposes to acquire non-Federal inholdings in well-blocked areas. I have also included some examples of exchanges and the various patterns.

I will conclude my statement, Mr. Noonan.

[The prepared statement of Mr. Bibles follows:]

JUN 15 1982

STATEMENT OF DEAN BIBLES, ASSISTANT DIRECTOR, LAND RESOURCES, BUREAU OF LAND MANAGEMENT, BEFORE THE PUBLIC LANDS AND RESERVED WATER SUBCOMMITTEE OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE AT A WORKSHOP ON LAND PROTECTION AND MANAGEMENT.

I appreciate the opportunity to participate in this session of the workshop on land exchanges.

As indicated by the Director of the Bureau of Land Management yesterday, land exchanges are an important tool of public land management. BLM has been exchanging lands for many years. The first general exchange authority was contained in section 8 of the 1934 Taylor Grazing Act. That authority was later superseded and expanded in 1976 by section 206 of the Federal Land Policy and Management Act of 1976.

During the 12 year period from 1970 to date inclusive, BLM has negotiated 578 exchanges. Of this total, 317 were successfully completed, 120 failed and 141 are still in progress.

The Federal Land Policy and Management Act sets certain basic requirements that are applied when the public lands are involved in an exchange. Every such exchange must meet these criteria:

1. The public interest must be well served;
2. The lands to be exchanged must be equal in value, or if not equal, the values must be equalized by the payment of money so long as the payment does not exceed 25 percent of the value of the lands being transferred out of Federal ownership; and
3. The lands to be exchanged must be within the same State.

The public interest test must be met on a case-by-case basis. There are no general public interest criteria applicable to every exchange other than to assure that the value of the land to be acquired is at least equal to the value of the lands to be transferred out of Federal ownership.

Procedures for implementing the Federal Land Policy and Management Act exchange provisions were published in the Federal Register on January 6, 1981 and became effective on April 15 of that year. The procedures are now receiving thorough and careful review with the goal of streamlining the process. We expect to publish proposed amendments this summer.

Lands administered by the Bureau of Land Management include large, well-blocked areas containing small non-Federal inholdings, areas checkerboarded with non-Federal areas, and scattered tracts of public lands within large areas of non-Federal ownership. The well-blocked areas of public land are generally identified in land use plans for retention in Federal ownership, and public lands in these areas are not normally available for exchange.

The checkerboard areas sometimes present management problems not associated with the well-blocked areas. As most of you are aware, they are the result of railroad grants made during the last century to help settle the west by providing a reliable means of transportation. Exchange can be a valuable tool in alleviating the management problems due to the checkerboard pattern and can be of benefit to the private owner as well. However, other tools including cooperative agreements, rights-of-way, leases, permits, and easements also exist and are in use.

The scattered tract areas are the last most frequently identified in land use plans for disposal. They have been used extensively for exchange purposes to acquire non-Federal inholdings in the well-blocked management areas.

I will describe briefly several recent successful exchanges:

1. BLM completed an exchange in a checkerboard area in California with the Southern Pacific Land Company in 1981. The proposal took about 1 1/2 years to complete. The United States acquired 14,500 acres of land in the remote Granite Mountains. These lands contain public values for potential wilderness and for bighorn sheep habitat. In exchange, the Southern Pacific Company acquired 4,160 acres of public land with potential for urban expansion and industrial development near Barstow, California.

2. An exchange was completed this year in Montana with a private property owner. The exchange allowed both BLM and the private property owner to consolidate their land holdings. The public lands consisted of 1,040 acres of scattered tracts within a ranch. The United States received 918 acres in a well-blocked area that is managed for wildlife habitat and the grazing of livestock. The exchange took about a year to complete. The private individual paid the United States $2,300 to equalize values.

3. In the Alplanalp exchange in Utah the United States acquired 627 acres to consolidate rangelands, acquire water for livestock and wildlife and to protect important sage grouse wintering habitat. The private landowner needed 360 acres of public lands for development of a livestock feeding lot. The value of each of the tracts was determined to be $180,000.

4. For a period of several years we worked toward the completion of an oil shale exchange in Colorado. It was successfully completed in 1980. The exchange is known as the Colony exchange. Colony received 337 acres of public lands scattered throughout its lands. Sizes of the scattered tracts ranged from 10 to 100 acres. The United States received 342 acres in a single block that lies next to a Naval Petroleum Reserve and can be mined in conjunction with the reserve. If the exchange had not been successful, Colony eventually would have mined around the public lands, leaving them in a "sea" of mined-over non-Federal lands. The value of each of the tracts in the exchange was $577,000.

Mr. NOONAN. Thank you, Dean. Our next panelist is Mr. Walt McAllester, Chief, Division of Realty, Fish and Wildlife Service.

STATEMENT OF WALTER. R. McALLESTER, CHIEF, DIVISION OF REALTY, FISH AND WILDLIFE SERVICE

Mr. MCALLESTER. Thanks, Pat. I am glad to have the opportunity to participate in the workshop again, and Vernon made a very detailed description of the advantages of exchanges and the cost savings involved with management. I won't review that in detail.

The new administration has placed a new emphasis on exchanges as a means of acquiring inholdings, and they are primarily effective in acquiring inholdings. We have not tried them on new areas.

Exchanges, however, are not new to the Fish and Wildlife Service. The Service has had exchange authority since 1935. From 1966 through 1981 the Service acquired 45,000 acres by exchange, while divesting itself of 34,000 acres, for a net gain of 11,000 acres.

For fiscal 1970 through 1981, the Service has attempted 257 exchanges. Of those, 160 were successfully completed, and 97 failed. An additional 69 exchanges are now in progress.

The National Wildlife Refuge System Administration Act authorizes the Secretary to acquire lands or interests in lands for the refuge system through exchange for acquired lands or public lands or for the products of the land. However, the value of the properties exchanged must be approximately equal or be equalized by payments. Our authority is probably the broadest and least restricted of any of the Federal agencies. We do not have restrictions limiting exchange to the individual state or some of the requirements that other agencies face. We can also acquire by trading products.

Under certain circumstances, exchanges have been very successfully used at certain refuges. A case in point is the Noxubee Refuge in Mississippi. Since its establishment in 1944 on lands acquired under the Bankhead-Jones Farm Tenant Act, which was the old administration buying out submarginal lands that were depleted before the 30th, acquisition at Noxubee has been almost entirely through exchanges; 20 percent of the present 46,000 acre area were acquired by the Service through exchange for land or timber. In this case, timber and timberland are easily convertible to cash so that sawmill operators who desired private lands exchanged them to us for the lands that were isolated from the bulk of the refuge or for timber in the area, and we had some fine timber on that tract.

Otherwise, exchanges generally require that an adjoining owner desire the lands that you have available, and they have lands that will be suitable for us.

There are several problems that cause exchanges to be difficult and result in substantial incidental costs. The Service attempts to acquire properties in priority sequence. Owners of the highest priority properties may not be interested in any properties we have, only in receiving cash. Even if they are interested in exchange, a suitable exchange property may not be available. Unless a third party is willing to broker an exchange, it is extremely difficult to make the matchup. Under existing law, equal value exchanges do not provide an incentive for a third party to expend the necessary time and money or risk to arrange exchanges.

The exchanges require two appraisals and frequently two land surveys, and all the other legal requirements that Vern mentioned in terms of A-95 and NEPA. Because two properties are involved, there is more opportunity for value disagreement. Negotiations may be long and arduous. Often after much time and effort on exchanges no agreement is reached.

In addition, to effect an equal value exchange, a land owner is sometimes required to make an equalization payment but many landowners are unable to financially reach that payment.

If the Service needs to make an equalization payment, no funds may be available, or a reprograming may be required which takes a long time. Once they agree to make an exchange, it can fall through if we don't have the funds.

The exchange process could be simplified by having a specific line item in the appropriation to provide funds for this.

Another problem concerns the availability of lands to use to make exchanges. There is a limit to the lands or products available for trading up through exchanges, and I will repeat the point that was made in the previous panel, that the net cost to the taxpayer may not be a real advantage in an exchange. We are trading assets that could amount to money, and there are limits to the availability of the assets that can be traded off.

The only justification for a transaction is that we are trading property of lesser utility for property providing greater benefit even though the appraised market value is equal. Studies are currently being done by the Service to identify possible exchange opportunities. Some studies have been completed and negotiations are now underway and are expanding the exchange program.

Thank you.

[The prepared statement of Mr. McAllester follows:]

STATEMENT OF WALTER R. McALLESTER, CHIEF, DIVISION OF REALTY, U.S. FISH AND WILDLIFE SERVICE, BEFORE THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE, SUBCOMMITTEE ON PUBLIC LANDS, AT THE WORKSHOP ON LAND PROTECTION AND MANAGEMENT - JUNE 15, 1982

LAND EXCHANGES

The current Administration has placed a new emphasis on the use of exchanges as a means of acquiring inholdings. Exchanges, however, are not new to the Fish and Wildlife Service. The Service has had exchange authority since June 15, 1935.

From 1966 through 1981, the Service has acquired nearly 45,000 acres by exchange, while divesting itself of nearly 34,000 acres, for a net gain of over 11,000 acres. For fiscal years 1970 through 1981, the Service has attempted 257 exchanges. Of those, 160 were successfully completed and 97 failed. An additional 69 exchanges are now in progress.

The National Wildlife Refuge System Administration Act authorizes the Secretary to acquire lands or interests in lands for the refuge system through exchange for acquired land or public lands or for products of the land. However, the values of the properties exchanged must be approximately equal or equalized by payments.

Under certain circumstances, exchanges have been used very successfully at certain refuges to acquire inholdings. A case in point is at the Noxubee National Wildlife Refuge in Mississippi. Since its establishment in 1944 on lands acquired under the Bankhead-Jones Farm Tenant Act, acquisition at Noxubee has been almost entirely through the use of exchanges. Twenty percent of the present 46,000 acres of refuge are lands acquired by the Service through exchange for land or timber. In this case, timber and timber land are easily convertible to cash. Otherwise, it generally requires an adjoining owner desireous of consolidating his holdings.

There are several problems that cause exchanges to be difficult and result in substantial incidental costs. The Service attempts to acquire properties in priority sequence. Owners of the highest priority properties may be interested only in receiving cash for their properties rather than another parcel of land. Even if they are interested in an exchange, a suitable exchange property may not be available.

Unless a third party is willing to broker an exchange, it is extremely difficult to make the match-up. Under existing law, equal value exchanges do not provide any incentive for a third party to expend the necessary time, money, or risk to arrange exchanges.

Exchanges require two appraisals, and frequently two land surveys. Because two properties are involved there is more opportunity for value disagreement. Negotiations may be long and arduous. Often, after much time and effort on an exchange, no agreement is reached.

In addition, to effect an equal value exchange, a landowner is sometimes required to make an equalization payment; many landowners are unable to make such a payment.

If the Service needs to make an equalization payment, no funds may be available or a reprograming may be necessary to obtain the funds for that payment. The reprograming process can take several months and landowners usually are impatient once they decide on a transaction. The exchange process could be simplified by having a specific line item appropriation for funds that could be used for equalization payments.

Another problem concerns the availability of land to use to make exchanges. There is a limit to the lands or products available for "trading up" through exchanges. The only justification for a transaction is that we are trading property of lesser utility for property providing greater benefit even though the appraised market value is equal.

Studies are currently being done by the Service to identify possible exchange lands. Some studies have been completed and negotiations are now under way.

Exchange Case Study

The Service has recently completed a unique exchange. It took over a year to complete, in spite of efforts to expedite it.

The subject property, a 0.31-acre tract of land at Harris Neck National Wildlife Refuge in Georgia, was the site of a small marina, store, cocktail lounge, fish house and other buildings. Access to the property was across refuge lands, which was an administrative nuisance because travel occurred at all hours of the day and night. The subject property will provide public access to fishing and plans are to construct public use facilities there. The Service had reached agreement with the owner for purchase but was unable to obtain the necessary funding.

The Nature Conservancy offered to purchase the subject property and then exchange it for a tract at Piedmont National Wildlife Refuge. The Piedmont land was an isolated tract of 65 acres that had a higher market value than the subject property. Therefore, in order to equalize the exchange, The Nature Conservancy offered to exchange a 40-acre tract that it owned at Overflow National Wildlife Refuge along with the tract at Harris Neck.

So that The Nature Conservancy could recoup its funds promptly, buyers were solicited for the Piedmont tract. Georgia-Pacific agreed to purchase the Piedmont tract from The Nature Conservancy at the time of closing.

The exchange was unique because it involved four parties (The Nature Conservancy, Georgia-Pacific, the private landowners and the U.S.). It also involved lands in two States (Georgia and Arkansas), and three refuges (Piedmont, Harris Neck and Overflow).

This exchange was very complicated and demonstrates the difficulty in reaching an equal value. A great deal of coordination, time and effort were needed by the Service and The Nature Conservancy to make it a success.

Mr. **NOONAN**. Thank you, Walt. Our fourth and final panelist is Mr. Willis Kriz, Chief, Land Resources Division, National Park Service. Will?

STATEMENT OF WILLIS P. KRIZ, CHIEF, LAND RESOURCES DIVISION, NATIONAL PARK SERVICE

Mr. **KRIZ**. Thank you, Pat. The subject of exchanges is one that is not altogether unfamiliar to the National Park Service. Most acts authorizing units of the national park system in fact include exchange authority.

Since 1913 when the first land exchange involving a national park system unit was transacted, 555,105 acres of land have been added to the system through that method, through a total of 471 separate transactions.

The land protection policy adopted by the Department of the Interior since last May 7, places a greater reliance on alternatives to direct purchase of lands than has been the practice in the past. Protection of land through acquisition by exchange is one of the cornerstones of the new policy.

Under the policy, land protection plans are going to be developed for each unit of the national park system where non-Federal lands still remain. The plan will identify which lands are to be acquired, what level of interest is to be acquired, what methods of acquisition are appropriate, and what lands may be protected through means other than acquisition. Thus we anticipate that land exchanges will figure prominently in our land protection planning.

I have listed in my statement a number of advantages and disadvantages of exchanges, and rather than read them now because they really repeat what has already been said, I will pass that up and I will simply submit my statement to the record.

I will also submit to the record an article from "The Energy Daily" of June 2, entitled, "Rocky Mountains Sexy Land Swap." I have heard exchanges called lots of things, but sexy is one I haven't heard before. This article is describing the exchange that we are now involved in with the Grand Teton National Park involving lands of the Rockefeller JY Ranch, the gifts that have been made from that ranch to four institutions, the participation of the Rocky Mountain Energy Co., as a third party to acquire those properties and the exchange of those for coal lands in southern Wyoming. I will also submit that for the record, and I will simply conclude by saying that the National Park Service is committed to pursuing exchanges as an effective means of acquiring lands, and we intend to use them wherever appropriate.

[The full statement of Mr. Kriz and article follow:]

STATEMENT ON LAND EXCHANGES BY WILLIS P. KRIZ, CHIEF, LAND RESOURCES DIVISION, NATIONAL PARK SERVICE, BEFORE THE PUBLIC LANDS AND RESERVED WATER SUBCOMMITTEE OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, AT A WORKSHOP ON LAND PROTECTION AND MANAGEMENT, JUNE 15, 1982

Most Acts authorizing units of the National Park System provide for land exchanges. Since 1913 when the first land exchange involving the National Park System was transacted, 555,105 acres of land, involving 471 separate transactions, have been added to the System.

The Land Protection Policy adopted by the Department of the Interior on May 7 places greater reliance on alternatives to direct purchase of lands than has been the practice in the past. Protection of land through acquisition by exchange is one of the cornerstones of the new policy. Under the policy, Land Protection Plans are to be developed for each unit of the National Park System in which non-Federal lands exist. The plans will identify which lands are to be acquired, what level of interest is to be acquired, what methods of acquisition are appropriate and what lands may be protected through means other than acquisition. We anticipate that land exchanges will figure prominently in our land protection planning.

In acquiring lands through exchange, the National Park Service has observed that there are advantages and disadvantages to this approach.

The advantages include the following:

- Lands may be acquired without using large amounts of appropriated funds. Money is needed for appraisals, title expenses and administrative costs, and money may also be necessary to equalize values.
- Some owners prefer replacement property to cash, thus making exchange desirable.
- In two-party exchange the owner receives replacement property instead of cash, therefore avoiding capital gains tax.

- Lands surplus to Government needs are disposed of at fair market value without going through a complex disposal process.

The disadvantages are:

- In contrast to direct purchase, where the Government has authority to acquire through condemnation to assure the timely completion of acquisition, completion of an exchange depends entirely on agreement.

- Appraisals of both the selected and offered lands must be completed and agreement must be reached on two values instead of one.

- In an exchange proposal, not only the principals but numerous other parties are interested making the exchange process more time consuming and difficult. Those interested may include BLM or GSA, other Federal agencies and State and local governments.

- Although the Government owns a great deal of land, very little of it is available for exchange, and those lands that are available may not be desirable for exchange. For example, missile sites, radar stations, storefront post office buildings, and other special purpose buildings are not very atttractive exchange stock. Land suitable or desirable for second-home sites is rarely available.

- A relatively small proportion of owners whose land is being acquired is interested in acquiring Government-owned land in exchange. Three-party exchanges are useful in these circumstances, but they are even more complex than two-party exchanges.

- Neither BLM nor GSA maintains an inventory of lands suitable for exchange purposes. The burden falls on the agency wanting to acquire land and on the private party whose land is to be acquired to locate the Federal land to be used in an exchange.

- Although BLM has jurisdiction over millions of acres of land, precious little of it is classified for disposal and, therefore, is not readily available for exchange. Classification can require additional time.

In our experience land exchanges normally take no less than one year from start to finish. Occasionally, however, it takes as long as two to three years to complete an exchange.

Assuming that we have determined that an owner is interested in acquiring other Government property by exchange, the first step is to ascertain the availability of Government property within the same State. This generally involves consultation with the holding agency to confirm that lands are, in fact, available. Once land is identified, appraisals are obtained of both the land the Government is seeking to acquire, referred to as the "offered lands", and the Government- owned lands to be exchanged for it, referred to as the "selected land".

If the values of the lands are approximately equal, and if both parties are agreeable to those values, the exchange can go forward in a straight-forward fashion. When values are unequal, and assuming that the values are acceptable to the two parties, the differential must be offset by cash payment by one party or the other before the exchange can be consummated.

When the owner is not interested in receiving Federal lands, it is still possible to transact an exchange through third parties who want the Federal lands and who also have the money to pay for them. Unfortunately, the interjection of a third party simply complicates the process by increasing the number of parties who must agree to all aspects of the exchange.

In conclusion, while exchanges are cumbersome and time consuming, the National Park Service nevertheless regards them as an appropriate means of acquiring lands or interests in lands in certain cases.

Because there is a real need to "uncomplicate" the process, the National Park Service is pleased that the Subcommittee on Public Lands and Reserved Waters has taken an interest in the subject. We are hopeful that the workshop will lead to some streamlining of the process.

Mr. **Noonan**. Thank you, Will. I have your written testimony before me, and I note that you state that, "We are hopeful that the workshop will lead to some streamlining of the process for exchanges."

Mr. **Kriz**. Absolutely. It is a very complex process, as you know, as the other panelists have pointed out. Obviously there are many cumbersome routines that have to be gone through that we would hope could be trimmed down.

There are good reasons for many of the things that have to be done, but I really believe that some streamlining could be accomplished.

Mr. **Noonan**. I have been asked to submit a paper on this subject for the record, which I have done. I would like to summarize some of the thoughts in that paper which are basically a result of the last workshop. This deals with exchanges, and they are with the intent of trying to streamline that process.

I am hopeful that the panelists and respondents can possibly comment on some of these suggestions for the future. The first would be the recommendation that an aggressive and professional inventory program be adequately funded and using FLPMA guidelines should be initiated. The funding should cover the land and water fund for a minimum 10 percent fee on the proceeds of all sales, leases, and royalties from public lands.

Hopefully within 5 years all Federal lands will have been cataloged for retention, disposal, or further detailed study. In addition, properties approved for disposal could either be sold with a percentage deposited in a newly established resource trust fund, or exchanged for authorized holdings directly or via three-party exchanges.

The migratory bird fund would be a possible model for a resource trust fund for resource management protection and exchanges.

In addition, a coordinating entity should be established to insure cooperation of the Park Service, BLM, Fish and Wildlife Service, and the Forest Service in the planning of the exchange program. Hopefully data bases will eventually be compared and a coordinating body should be at the highest level necessary to insure involvement of all the affected agencies.

In addition, exchanges would be permitted across State boundaries where there is no objection by involved counties or States within 30 days of notice. A percentage of all resource sale and lease proceeds would go into the resource trust fund. Advanced ruling on gifts or bargain sales involving exchanges by the Internal Revenue Service should be encouraged.

A training program would be established to encourage professional development in exchange techniques. An exchange review process should be established which is uniform to all Federal landholding agencies. Adequate funds to be provided by the affected agency for the related costs of an exchange such as appraisals, environmental assessments, public notice, and so forth, must be available on an annualized basis.

A task force should develop within 6 months working in concert with the U.S. Geological Survey a standard approach for the valuation of mineral interests to be included in an exchange, including public agency retention of royalty interests.

[From the Energy Daily, June 2, 1982]

ROCKY MOUNTAIN'S "SEXY" LAND SWAP

(By Kennedy Maize)

The March 5 notice in the *Federal Register* was dry as dust. "Notice is hearby given that the Wyoming State Office of the Bureau of Land Management has before it a land exchange proposal between Rocky Mountain Energy, Inc. (RME) and the United States. The exchange would benefit the National Park Service, inasmuch as the land to be acquired by the United States is situated within the Grand Teton National Park."

But behind the BLM's dull prose lies a complex deal involving Rockefeller family land, the park, four eleemosynary institutions, a railroad's mining subsidiary and coal. "This is the most byzantine land exchange I've ever seen," says an energy consultant who follows these matters. "Really sexy," says another.

It began back in 1980 when Lawrence Rockefeller started giving away parts of his family's holdings inside the boundaries of the park in Wyoming. The Rockefellers have been big land owners in the scenic area since the early 1900s and donated most of their holdings to the Interior Department when the park was created.

But the Rockefellers kept a large portion of land, which they are now giving away. According to National Park Service estimates, when the family's current land disposal plans are finished, only 1,000 acres will remain in Rockefeller hands.

Among the early recipients of the Rockefellers' latest largesse were Princeton University, Dartmouth College, the Vermont School of Law and the Memorial Sloan Kettering Cancer Institute, which together received 755 acres of land surrounded by park. According to some of those involved, Rockefeller figured that by dividing the land into smaller parcels, and giving them to charitable groups, he could give them something of value and also see that the land ended up in the park.

The notion was that the charities would sell their holdings to the Park Service, which has lusted after them for years. "I used to see money for those holdings every year in Interior Department budget requests," says a former Office of Management and Budget examiner, adding that he dutifully knocked the money out.

The idea that Uncle Sam would acquire the Grand Teton in-holdings went up in smoke when the Reagan Administration put James Watt in charge of the Interior Department. Watt quickly made it clear that he intended to purchase no new land for the park system.

The four educational institutions were left holding the land. So they started shopping for someone who might be interested in using the Teton lands to exchange for Interior lands elsewhere.

That's where Rocky Mountain Energy came in. The Union Pacific subsidiary was interested in filling out checkerboard coal lands in the Hanna Basin in southwestern Wyoming. Back in the 19th Century, Congress gave the rails alternate sections of land to encourage development of the lines. RME said it would buy the park inholdings from the four non-profit institutions if Interior would first agree to exchange the land for coal lands.

RME proposes that it get four sections of Hanna Basin land—some 1,280 acres—in return for the chunks in the Tetons. The land RME wants sits in the middle of some of the best coal in the west, 18 miles due west of the mining cluster consisting of Medicine Bow, Seminoe 1 and 2, Rimrock, Vanguard No. 2, Carbon County Coal, and Rosebud. It also is close to the Red Rim tract where RME wants to engage in a "cooperative" lease sale to block up checkerboard holdings. The main UP line runs about 15 miles south of the tract.

"It could make one of the biggest mines in the West," bubbles a resource expert who is following the transaction. "The coal is so close to the surface it outcrops."

But the deal is far from done. Interior expects to publish an environmental assessment sometime this month. The more thorny issue is a question of value. Under the terms of the Federal Land Policy Management Act, land exchanges must be of approximately equal value, within 25 percent of each other.

On big exchanges in the past, that has proved a difficult calculation and will be again in this case. The general test is to see what similar sales have been bringing, but that is often a murky test, especially in a slow market. "The matter of value is what makes exchanges so hard to negotiate," says Interior's William Kriz, in charge of land exchanges for the Park Service. "There have been some [private] land sales in that area, but not a whole lot."

Thomas Debevoise, dean of the Vermont School of Law, says that an appraisal done when Rockefeller made the gifts showed that the 55 acres his institution owns are worth about $11,000 an acre. At that rate, the full 755 acres would be worth more than $8 million. Debevoise adds that his group expects the exchange could take two years or more to consummate.

Determining the value of the coal land will also be difficult. The coal market is soft and good leases have gone begging recently. "How do you figure the worth of coal in the ground?" ponders a Park Service official in Denver. "I don't know."

And if the exchange is approved, it faces a nearly certain suit from the National Coal Association. NCA maintains that land exchanges that put railroad subsidiaries into the coal mining business violate Section 2(c) of the 1920 Mineral Leasing Act. "The intent is clear. Congress did not want railroads mining coal. Period. It's as simple as that," says an NCA official.

Finally, the public agency should develop a landowner awareness program, including pamphlets so the public understands how to initiate an exchange along with the responsibilities of all parties involved.

I would like now to turn it over to the respondents. We have two respondents with us today. The first is actively involved in exchanges for a living, Mr. Dan Pike, President, Open Lands Real Estate, Denver, Colo.

I have always had a motto about exchanges, and that is that you are not a man until you have done an exchange. I don't think Dan has done one, but we'll find out. Dan Pike?

STATEMENT OF DAN PIKE, PRESIDENT, OPEN LANDS REAL ESTATE, DENVER, COLO.

Mr. PIKE. Thanks. I would like to address my comments today to what I hope is the practical application of exchanges and how we can make them work better and more effectively.

I am a licensed real estate broker in Colorado and Wyoming. As Pat noted, I am currently conducting exchanges on behalf of several different clients for all four of the agencies, with all four of the agencies represented on the panel today. I would like to make several comments concerning some of the things that the panelists said and some of the things that have been said during the course of the workshop this morning and yesterday.

First, I cannot emphasize enough the point Pat made just a moment ago, the point Tim Schultz from the National Association of Counties made yesterday, regarding the training programs for agency personnel in conducting exchanges and regarding public information programs to local governments and those impacted by exchanges as to what constitutes an exchange, why a Government agency is doing an exchange, and what limits there are in the Government agency in doing those exchanges.

Second, having expertise at the field level of the agencies when it comes to conducting exchanges, and in having some public awareness as to the limitations of exchanges. I think those two elements would go a long way in solving many of the problems that usually stop an exchange.

It was suggested yesterday that disposal by sale would take priority over disposal by exchange under the asset management program. This was to be accomplished by putting disposal lands on sale on the open market for 2 years and only in the event that they did not sell would they then be made available for exchange.

This would simply kill the exchange process in my opinion. You are by definition providing only unmarketable lands for use in exchanges.

Third, I have problems with the concept of exchanges requiring approval by the Property Review Board. Mr. Harper from the Property Review Board stated yesterday that the Board wanted this review procedure in order that they could make sure that disposal lands were being used only for high priority exchanges. It occurs to me that the agency charged with managing the land resource in that section of that Department are much more qualified to do the determination of priority of exchange.

We also heard some conflicting testimony yesterday on the current status of the identification of disposal lands. My own impression based upon personal experience in Colorado and Wyoming and in dealing with many of the field personnel is that there are literally hundreds of thousands of acres already identified for disposal either informally on formally in existing land classification plans, or in plans that are currently under development.

However, much of the work that is required to satisfy the FLPMA regulations and to properly appraise these lands has not been done. My impression is that this work can be completed presently only by diverting substantial personnel and resources from other agency programs.

In Mr. Lindholm's presentation this morning he cited an administrative cost within the Forest Service over the last 4 years of $83 per acre for each exchange completed. If we apply the same number, $83 an acre, to the proposed lands classified for disposal under the asset management program in Colorado alone where 600,000 acres have been identified for disposal under the asset management program, we are talking about $50 million in administrative costs.

Yesterday we were told that no additional funds would be needed to conduct this disposal by sale program, and I beg to differ based on some of the statistics we have heard today.

Now I want to take it a little bit further. My personal experience with Colorado, presently the Colorado State Office of the Bureau of Land Management is conducting in the neighborhood of 270 appraisals of rights-of-way each year. They are required presently to appraise $8 million in State new land selections. They are required to review Corps of Engineers appraisals on nearly 200,000 acres of land for the expansion of Fort Carson Military Base. Under the asset management program, they will be required to appraise an additional 600,000 acres identified for disposal.

In Colorado there are two GS-12 land appraisers and one trainee. There are no vacancies and no plans for additional staff. It will be simply impossible for those three BLM appraisers to meet the Federal appraisal standards in appraising all those properties. These lands classified for disposal, whether by sale or by exchange, will require substantial funds and/or personnel to fulfill the requirements of FLPMA and to be properly appraised.

There seems to be three options for funding—either presently increase funding to the agency for this purpose, create a resource trust fund for this purpose from the sale proceeds or from use of land and water conservation funds, or third having private contractors employed by the private sector perform many of the FLPMA requirements and the appraisal needs. The exchange proponent, the person that is going to be receiving the disposal land, the recipient, or the proponent would then be compensated for these expenses through a land add-on to the original exchange proposal. This in turn would reflect the true costs of making public domain land marketable.

In closing, let me say that after having experienced what is the land exchange process from the private sector side as opposed to Pat's comments, I am encouraged by the potential for its use as an effective land adjustment tool. I think that it needs some minor refinements, but I do not believe it needs major surgery.

Thank you.

Mr. NOONAN. Thank you, Dan. Our second respondent is Mr. David Morine, vice president, land adquisition, the Nature Conservancy. Dave?

STATEMENT OF DAVID MORINE, VICE PRESIDENT, LAND ACQUISITION, THE NATURE CONSERVANCY

Mr. MORINE. Than you, Pat. First of all, I would like to say that I am speaking as an individual. As you well realize, the conservancy has neither the resources nor the expertise to take a position on these broad issues.

As an individual, I would like to say it is a pleasure to be here because usually I am somewhat frustrated when I come to these meetings. I see tremendous opportunity and ideas thrown around but implementation of those ideas looks far, far down the road.

My frustration this time stems from the fact that we seem to be moving away from what I perceive to be a tremendous opportunity for the proper allocation of our resources in this country, that being exchange lands. To go back a way, I have nothing but admiration for the people who put this country together, men like Jefferson, Seward, Jackson. For somebody who dabbles in real estate as I do and tries to put assemblies together, to think of assembling this country is unbelievable.

On the contrary, the people who distributed that assemblage did a terrible job. There was graft, corruption, special interest groups, the railroads, alternate sections, and no inventory so they didn't know what they had. All of this was on a first-come-first-served basis and all of which led to an America today in which the U.S. Government owns approximately one-third of the country. I don't know whether this is a good figure or bad figure, but I do know that we don't own the right to one-third.

There is a tremendous need for exchanges, and with the cut in the land and water conservation fund, there is a tremendous opportunity for this country to, one, inventory our property, and two, consolidate our land holdings.

Secretary Watt stresses over and over again that the top priority of his administration is to manage the lands that we already have. Ric Davidge said earlier that part of the management process includes the proper boundaries and consolidating our land holdings. However, when we come to the Property Review Board, they seem to place a very low priority on the exchange process for the consolidation of our resources. The first priority is to reduce the national debt. I am all for reducing the national debt. I can't argue with that.

We have in fact given up on the land and water conservation fund which is again a sales realty of resources of the United States that used to go to land acquisition, but is now going to reduce the national debt. It seems to me that we have an opportunity here to consolidate and inventory our property, and we have the top administrators of land in this country sitting in front of a Senate hearing and saying that they lost 40 million acres which is like saying we have lost North Dakota. I get a little nervous about that. There seems to be a need for inventorying, yet what they are talking about in the exchanges is that first they will be listed for sale to reduce the national debt. What we haven't sold in 2 years then we will make available for exchanges. As a land administrator, I would like to see that property after 2 years and it has been picked over and nobody has picked it up. I'm sure there will be a line wanting to exchange it. I don't know what you think an exchange is.

As for the national debt, they are talking about generating $13 billion in 1986. According to my calculation, they have got the zero mixed up. That is 1 percent of the $1.3 trillion national debt, so obviously the sale program of real estate isn't a big part of our program, but at the same time it could be a major part of letting our own resources that we have today, our parks, our wildlife refuges, our management areas, our Forest Service be used for commercial purposes and getting them in shape and going back to Secretary Watt's premise of managing what we have before we acquire new land exchanges would seem to be an ideal way of doing that.

I have questions about easements and all these alternative techniques that people are promoting, but it is still going to cost somewhere around $3 billion, so the $13 billion from land sales are a small part of the national debt. It is close to four times what we need to get that done, and it would seem to me if the Property Review Board was going to take a stance, the first stance should be to reduce the existing surplus lands, to consolidate, and to inventory our holdings. Then we can move into a program that would generate funds for the national debt.

It makes a lot of sense to me as a resource manager to try and get what you own in land before you start selling stuff off, and apparently we don't know what we have and what we own.

I have specific questions on exchanges. We have tried to work through exchanges and have had nothing but problems. I think there are things to be done to alleviate some of those problems, but given the attitude that I heard this last day and a half, it is almost a moot question unless the general policy is that yes, we will use our surplus property to get what we own now in shape, and we will make a commitment to exchanges in lieu of the fact that the land and water conservation funds apparently are not funded.

Mr. Noonan. Thank you, Dave. We will now go to the question part. I would like to ask Bill first if he has any questions he would like to ask the panelists or respondents?

Mr. Reilly. A followup on some of the things that have been said, it seems to me there are two issues I would like to see elaborated on further. One concerns communication, and the other money.

First with respect to communication, Mr. Bibles, in the workshop last summer, more than one person commented that before the commercial real estate market was fully rationalized in the United States, it was necessary to have a multiple listing process, and once such a process was in being, it vastly simplified transactions all over the country, including exchange transactions. There simply was a great deal of information available about what was out there that one might think of trading for it.

That would seem to be a very intelligent idea for the national estate as well. Is there any way that you could conceive of BLM, Forest Service, Park Service, instituting such a computerized system which lists properties available for exchange throughout the United States?

Mr. BIBLES. I am not sure, Bill, that I know about the computerization on a nationwide basis of those lands available for exchange. I do know that there is a problem that has been pointed out as our individual land-use plans identify lands that are available for disposal or that should not be retained in Federal ownership, that it is quite difficult to go back over all of those plans and discover someone to come in that is interested in an exchange to really identify where those particular parcels are.

I think some of the ideas that have been brought forward of inventory certainly make some sense. Of course, in terms of our present law I think at least by State it would make sense if someone is interested in trying to work out an exchange in Wyoming they can find out what lands might be available from the various Federal agencies for exchange in that State.

Mr. REILLY. I suppose what I am talking about would cost money. I would be interested in the two respondents commenting on whether you think this kind of thing would be useful, but the broader money question has been gotten out by both Mr. Pike and Mr. Morine. It was implied pretty strongly yesterday when the assets management program was put forward in terms of budget revenue, and increasing opportunities, that exchanges will not have a very high priority.

Would one of the panelists care to respond to that concern? We all share it. It does seem to be pretty strongly suggested in the priorities we have had described to us on land disposal now, and exchanges obviously don't make the Treasury any money.

Mr. MCALLESTER. Bill, going back to your earlier comment on the inventory, everybody seems to overlook that there has been a surplus property disposal process in place since 1949, and any agency that has land that is not being utilized or is underutilized, is supposed to have had its hand slapped by Presidents Nixon and Kennedy and everybody along the line. Thus in theory there is no inventory out there except that held by GSA, and that falls out of the FLPMA planning process as being higher use for private use. There may be need on the part of some agencies for more disciplined management review, but in the National Wildlife Refuge System, the wildlife uses every acre that we have available.

Certainly as we approach the exchange process and have approached it over the years, there are tracts that fit into management and have a different kind of wildlife use that are more adaptable to current needs than when the land was acquired. When the land was acquired through settlement programs that met a different need in the thirties, there was a need to move people off the land and let the land heal. I don't think that there is this unused inventory out there other than a tightening up of management and a change in policy and philosophy, and that will flow presumably out of the review approach.

Mr. REILLY. It isn't clear that we know where those 4 million acres are.

Mr. MCALLESTER. Yes. I don't think we know today where the 4 million acres are.

Mr. REILLY. Apropos to my second question, are you getting a priority encouragement to search for opportunities to exchange land right now?

Mr. MCALLESTER. The Department of the Interior, as Secretary Watt expressed yesterday, has a high priority in terms of being a good neighbor and working out these exchanges and using exchanges to improve the management of areas that exist. In that Department Watt has gone before the Review Board, and has expressed that concern that his agents have an equal footing in the reduction of national debt.

The asset management program as I have read about it in the paper stems from some person's resolution and a concept that there is apparently a public perception that there is more unused real estate out there than I as a technician see. It remains for the Congress and the administration to work out whether or not there is in fact that much mismanagement in the Federal Establishment.

Mr. LINDHOLM. Bill, as far as the Department of Agriculture, they haven't had the opportunity to present their case before the Property Review Board, so I don't know exactly where we will come out and what the priority will be for exchanges versus sales.

Mr. REILLY. It seems to me that there is a confusion that characterizes our conversation so far. You have heard in the comment by the respondents the strong reservations about how you put these two priorities together, and some need to clarify just what will be the role of exchanges, and what kind of priority they will have at a time when we are trying to reduce the national debt by disposing of land.

Mr. LINDHOLM. One difference with the Forest Service, is that we do not have an authority for disposal of National Forest System lands, and that would be the first step we would have to take is pass legislation for that sale. At this point in time it is an exchange method.

Mr. NOONAN. I suppose Senate bill 705 would give you that authority to sell small tracts?

Mr. LINDHOLM. Small tracts; It would give us authority to dispose of small slivers of land between mining claims out West, lands where people are trespassed. It would also give us authority to interchange the title of small properties between the landowner that has part of a house on one side and another part of his land on the other side of the property. This would avoid the detail of appraisal, cultural resources, the entire package. We would be strictly interchanging title of small properties which would be very similar in value and characteristics.

Mr. Noonan. Is this where you both held respective undivided interest in the same parcel here and another parcel here?

Mr. Lindholm. If a private landowner who built a house which is partially on national forest system land, there would be an opportunity to exchange, interchange title for that sliver of land that his house is on or a portion off the other side of his portion which would be added to the national forest system.

Mr. Noonan. Thank you. Mr. Bibles, are the statistics that Mr. Pike presented regarding the State of Colorado as an example and the demand on those fine professionals working with BLM, correct or approximate?

Mr. Bibles. I don't have any way of knowing exactly the level there, but what he expressed in terms of the existing workload and priority of workload on our various field offices is very well represented in his statement.

Certainly various programs come online that require a fair market value, whether we are talking about the price we charge for the right-of-way or the land exchange or land sale program. The need for appraisal increases has now been delegated to the State directors. It is not reserved here in Washington or in the Service any longer. Our State directors can approve an appraisal without limiting the dollars.

Mr. Noonan. Turning now to the respondents, do you have any questions of the panelists?

Mr. Morine. The more I think about this program, it would appear to me the National Park Service doesn't have a lot of lands to exchange and the Fish and Wildlife Service doesn't have a lot of land. The Forest Service has some in which you have done 1,400 exchanges during 11 years, so we seem to be able to work a little of it, so that most of the exchange program would be with BLM.

Do you, in fact, feel that BLM and military is the unknown quantity. Do you, in fact, feel that you have that much surplus lands, and second, if it is there, can these other agencies get to it and use it as exchanges and try to round out the National Parks or the refuges? It is a two-part question.

Mr. Bibles. Let me try. A number of exchanges that I mentioned that have been concluded in the past number of years have been in support of other agencies. We presently have a number of exchanges in which the lands will be added to the national forest system when they are acquired. A number have involved the Park Service. The one that Mr. Kriz mentioned earlier, Grand Teton land, the Rockefeller estate land, involved BLM who administered the land that will be used for inholdings in Teton Park. There are a number of those, and there were some in the case studies mentioned earlier this morning that involved BLM administered lands that are being used as the financing to acquire inholdings. Those have been done, and we do expect to continue some of those.

Under the terms of the Federal Land Policy and Management Act, surplus lands that are made available go through the land exchange process in order to get to the point of an exchange, and those lands have not been identified in the existing plans. If we have an opportunity for plan amendment, we can take a look and see if it might be available to go through the exchange process.

Public lands are not subject to the GSA referral that was mentioned earlier, and the BLM has the sale authority. If a piece of land is suited for disposal under the criteria of FLPMA, then we do have the sale authority. It is not listed as real property. It is for disposal.

Certainly the kinds of things that cause an exchange to fail with the national forest system are the kinds of things that we have to be concerned about. In the public review process there are some instances where the public wants that piece of public land to remain right where it is for public uses or multiple use, rather than seeing it used as an exchange base for some other areas. That is one of the processes of the land use planning process we go through in accordance with the public review process.

Mr. MORINE. Do you think that the property review board is going to find the 13 million dollars' worth of real estate over the next 3 years? Do you feel that they are going to find $13 million, 13 billion dollars' worth of real estate from you gentlemen over the next 4 years?

Mr. BIBLES. I think I will limit my discussion to the topic at hand, exchange and the technical aspects of exchange rather than addressing the asset management of property.

Mr. REILLY. I am not sure I understood your answer to the other part of his question; the staffing issue. Does it require the kind of staff function, the staff energies that were described? If so, do you have those resources?

Mr. BIBLES. I think the bigger issue that each agency is faced with is what are the priorities that each of your field offices are faced with for a given year? The office that is involved in the exchanges in support of Teton Park acquisition has at least three major EIS efforts underway dealing with energy development from coal, major gas developments, and other wild horse programs and wilderness studies that are involved in addition to the land. Certainly there is a taxing of capability in those various offices if one desires to make a land exchange, whether it is our own people wanting to acquire a piece of land by exchange or another agency. Our field office must just really take a good, hard look at where the priorities are, where the funding is for that given year, and try to make the best judgment call.

We get accused in those areas of foot dragging and some other agency has that as their highest priority, but if we have some mineral leases and the State director has that as the highest priority that year, that is where he must put his energy. That is where he is funded.

Mr. PIKE. There are some issues that have been addressed by the property review board very directly as impacting exchange, and I think what we are trying to get at is how great those impacts are going to be. I would like one or several of your opinions on some of the limitations that Mr. Selfon's paper yesterday had on properties that will be available for exchange. I will just read from his paper rapidly. Properties "that are identified for sale will not generally be available for exchange except the following: property that has been offered for sale for 2 years and not sold; if the property would be exchanged with the Forest Service under the boundary adjustment program; and third, if in the exchange the Federal Government receives property that increases the salability of a larger unit."

Now if I understand this correctly, and this was a policy suggested by the Department of the Interior that was endorsed by the property review board, they are limiting property that would be available for use by exchange to these three categories.

Let me ask Walt. If you had to limit yourself to these restrictions on your land for disposal, how many of those exchanges could you have completed in the past decade? Do you have any idea, just a rough ball park figure?

Mr. McAllester. Those exchanges were made in a different climate, but normally a landowner came to us or we went to them because there was a mutual advantage in trading land adjacent to each other or in close proximity to improve the manageability of the private land and our land or the economic capability of the private party to manage his land.

That has historically been the greatest utility of the exchange procedure. The concept of massive use of the exchange in order to consolidate areas which envisions a multiple listing or a brokerage type of approach to exchange them is only experimental at this stage. Certainly if the private sale market has first crack at what is available on that list, what is left would be less attractive for anybody that is going to broker the exchange which you as a real estate agent could tell me.

Mr. Pike. If I understand what you are saying, an exchange that has taken place because there was a mutual benefit to the Fish and Wildlife Service and to the adjacent landowner to make the exchange, under these criteria that I mentioned would now only be available for exchange or the exchange would only be completed if that individual did not elect to purchase the property during the 2-year period that it was for sale, looking again at these limitations, you say if that land would be available and if that person elected to purchase property as opposed to acquire it by exchange, the proceeds of that purchase would go into the general treasury and the Service would still be left with an inholding in its refuge system that it would have acquired previously by exchange?

Mr. McAllester. If that is what the policy means—I believe we are still developing it, the board and the Department are still developing policy, so that if I understood Secretary Watt correctly yesterday, it was also the opportunity for review of individual exchange opportunities by a review board so that if we had an adjoining landowner, our land, we have no surplus land in the national wildlife system, and of course, the system is not subject to this, but there are tracts of land that we could improve our management and our wildlife outputs by adding, and other owners can improve their economic position if we traded, and so we don't have a bank of land that is surplus that is available for disposal or for exchange. We do have the opportunity to work out mutually acceptable agreements, and these might as we have in the Service have involved a third party so those exchanges are complicated, and in order to bring the values equal, we have dipped into their land bank to equalize tracts that we might require, and then they are able to make the commercial transaction that makes the money, so I can't answer your question whether his paper is final policy, one that would include an exchange program on our part because we don't have land available.

Maybe BLM can answer whether they have to put their land up for sale first, but I don't think the policy has become that firm yet.

Mr. PIKE. We have been picking on Mr. Bibles a lot. Let me try another question to Mr. Kriz along the same lines. Again these remarks, the way I read Mr. Selfon's comments yesterday, it says this is a policy that has been suggested by the Interior Department and endorsed by the review board that lands identified for sale will not be used for exchanges except with the 2-year limitation for sale, property would be exchanged in the Forest Service under a boundary adjustment program, or if in the land exchange the Government receives property that increases the salability of the larger unit.

We heard this morning in the previous panel that land exchanges were going to be looked to as a valuable tool in the land protection program within the Park Service.

In your own comments you have also indicated that land exchange is going to be looked to by the Park Service to solve many of the land adjustment problems. If we look at the project in Jackson, Wyo., as a model, that land being used for disposal purposes in your exchange in Wyoming is BLM land.

In your opinion, if we were to follow these guidelines that have been suggested by the Department of the Interior, would that land be available presently for use in that land exchange by the Park Service in Wyoming?

Mr. KRIZ. I am not sure because I think the public domain land would be separated into three categories—those to be retained, those to be disposed of, and those to be studied further—and I am not sure where our exchange lands in southern Wyoming in BLM's jurisdiction fall. I think they are not in the category to be disposed of. Therefore, I think that exchange will not be affected. As to the general question, perhaps some of our flexibility in making exchanges will be diminished. However, as Walt said, the policy has not been firmed up yet.

We have been led to understand that exchanges will be considered and exceptions will be made on a case-by-case basis. The burden then falls on us to make an adequate justification in the presentation to the property review board, and we are hopeful that these exchanges can go forward.

Mr. NOONAN. Do we have any questions by the respondents?

Mr. MORINE. Assuming that land is found and assuming that the exchanges become a priority, then we have the valuation question which is always a big problem I find in trying to work out an exchange. You have two different sets of valuation especially if you are talking about public domain lands. I imagine a big part would revolve around minerals.

Is there any formula for appraising minerals at this time? I know we would be at a complete loss if we were asked to put some value or evaluate some of the values they put on minerals. Is the Government, like most landowners, retaining some type of override for production royalties, and if so, would that seem to be a real complication on the exchange process?

Mr. **Bibles**. I will first give it a try. I will go back first to Mr. Pike's question in terms of the Teton exchange. The principal values involved in that exchange are the mineral values of the coal lands which would block up a mining unit held in that checkerboard area. Those particular resources are not currently available under law for outright sale, but we can under FLPMA exchange.

What we are doing is using values in the exchange that we could not put on the market for sale outright, fee-simple sale, so I think that particular exchange would move on.

In terms of how we come at those mineral values, in some instances where there is quite a bit of information by USGS that they already know quite a bit about the mineral resource, how much coal is there, how many Btu's, what kind, and so forth, they have a fairly good knowledge of those mineral values. One of the proposals that we have in process for modification of our exchange regulations would provide for resource equivalent exchanges, and this would be instead of establishing a fair market value, dollar value, for each oil shale or coal land, we would be trading in terms of, with another owner, for resource equivalent, not trying to put a dollar value. We would still be trading equal values, but it might not be a fair market dollar value.

It is a very difficult issue. We are exploring it. The Minerals Management Service is exploring it with us and attempting to achieve a way of accomplishing this.

Mr. **Morine**. I would like to say as somebody who works with you, I do appreciate the job that the resource managers are doing. I guess on this question I can only share your frustration. I know the frustration that you are working under continually, and I appreciate the fine job that you are doing.

Mr. **Noonan**. I want a clarification. You mentioned that there are certain BLM lands that are available for exchange that are not available for sale such as the mineral rights, or did I misunderstand?

Mr. **Bibles**. That's right. Under the terms of the Federal Land Policy and Management Act we have the authority to exchange interest in land, including the mineral interest in those lands.

We do not have the outright sales authority to put those same lands on the sale block.

Mr. **Noonan**. One final question and we will turn it over to the audience. Mr. Kriz, have you all been working in Locokonhoi on an exchange of major proportions which was recommended by a case study I recall with GSA?

Mr. **Kriz**. That is correct.

Mr. **Noonan**. And while GSA is not represented here today, we understand that process is being slowed down. I guess we have the same situation.

Does that require Property Review Board approval or does it require a third party because it sounds like an interesting solution to an inholding problem while disposing of surplus GSA lands?

Mr. **Kriz**. Well, we are preparing a justification for the exchange to present to the Property Review Board, and we can only hope that we persuade the Board.

Mr. **Noonan**. But it is your understanding this has to be approved by the Property Review Board?

Mr. **Kriz**. That is my understanding.

Mr. **Noonan**. Are there any questions in the audience of either the panelists or the respondents?

Mr. **Cushman**. Charles Cushman, National Inholders Association—Mr. Kriz, I am curious. Of the 400 some exchanges that the agency has concluded, how many of those occurred in the 17 parks where you can only acquire land by donation or exchange?

Mr. **Kriz**. I'm sorry, I don't have the breakdown. I can certainly try to get it for you.

Mr. **Cushman**. I think it would be interesting to know that when that is the only option, if that is a more successfully used option as opposed to those areas where other options are available in which case exchange goes lower on the priority list.

Mr. **Kriz**. Well, I think that perhaps it is possible that exchanges happen in part where exchange is the only method of acquisition, but certainly exchanges have not been limited to those parks.

[The information follows:]

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:
L1425(640)

JUN 29 1982

Mr. Charles Cushman
Executive Director
National Inholders Association
P.O. Box 588
Sonoma, California 95476

Dear Mr. Cushman:

At the recent Workshop on Land Protection and Management, sponsored by the Public Lands and Reserved Water Subcommittee of the Committee on Energy and Natural Resources, United States Senate, you asked me how many of the 471 exchanges completed by the National Park Service were in areas where the Service's only acquisition authority was by exchange or donation.

The intent of your question, as I understood it, was to demonstrate that many of the exchanges occurred at areas where the Service lacked other kinds of acquisition authorities and, therefore, in contrast to areas where purchase and condemnation are authorized, had the incentive to employ means other than purchase or condemnation. I replied that I would attempt to assemble that information.

Following is the information you requested:

Of the 471 exchanges the following were at areas where acquisition authority is restricted to exchange or exchange and donaton:

Area	Number of Exchanges	Acress Acquired	Acres Disposed
Acadia National Park	7	107.83	164.86
Carlsbad Caverns National Park	2	3,041.12	3,617.30
Shenandoah National Park	5	680.73(Fee)	822.09
Total	14	3,829.68 (Fee) 10.67(R/W)	4,604.25 (Fee)

There is only one other area (Hohokam Pima National Monument, Arizona) where authority to acquire lands is limited to exchange, however, no exchange has been accomplished at that monument as yet. The remaining 457 exchanges, in which 551,275 acres were acquired, were consummated in units of the System where lands were authorized to be acquired by a combination of donation, purchase with donated or appropriated funds, exchange, or otherwise.

A copy of this letter is being submitted to the Public Lands and Reserved Water Subcommittee for the workshop record.

Sincerely,

Willis P. Kriz

Willis P. Kriz
Chief, Land Resources Division

cc: Public Lands and Reserved Water Subcommittee, United States Senate, Washington, D.C. 20510

Mr. **Noonan**. Thank you. Other questions?

Mr. **Jarvis**. Destry Jarvis, National Parks and Conservancy Association—I note in the Biscayne study that was reviewed in the earlier panel, a statement that says, "The southeast director of the GSA has stated the use of surplus property by another Government agency to acquire land by exchanges is contrary to that policy." That is a quote from that report.

I recognize that the case study they are looking at is GSA land, but again there seems to be a lack of a clear administration policy on the use of surplus lands for purposes of exchange.

In the Grand Teton National Park study, in another land exchange discussed other than the one with the mining companies, there are some Wyoming State-owned lands in the park and they discuss a land exchange in which the State has asked for the surface rights to land where the State already owns the subsurface mineral rights. The statement is made that the BLM is adamantly opposed to giving them those surface rights in exchange. They would rather give them some mineral rights elsewhere on BLM land.

Again, it seems to be the policy to obstruct the effective utilization of exchanges by other agencies other than the ones that would benefit as a result of exchange. Perhaps one of the panelists would like to respond to that claim that there does not exist a clear policy that would encourage exchanges by the agencies which would end up giving up lands that they now administer. The agencies that would benefit from them, on the other hand, seem to welcome exchange where the land to be given up by the Federal Government is readily available.

Mr. **Bibles**. I would like to respond at least to the portion dealing with the State requesting the Teton Park situation. The State of Wyoming offered about 1,300 acres inside Teton National Park and requested 40,000 acres of BLM-administered lands where the surface was in BLM administration. The subsurface was owned by the

State of Wyoming. That particular situation was one that would undo a series of exchanges over the past years with the State of Wyoming, where only surface estate was exchanged, and where some of those areas were in fairly large blocks of very important wildlife habitat and other interests.

It was also mainly the checkerboard areas that BLM was very interested in trading, but of course, with the 40,000 acres, there is another 40,000 acres in Wyoming where exactly the reverse is true and where the State owns the surface and the Federal Government owns the subsurface. This would really not solve that particular problem, but an exchange of 1,300 acres for 40,000 acres, even if the values are equal, creates considerable concern. For some of those acres, the State of Wyoming, under the type of exchange that they got into in that situation, reserved all rights needed to go ahead and develop those mineral rights, just as the Federal Government did for access to get into them. I think the statement that BLM was adamantly opposed to the exchange is not accurate because we are very interested in portions. However, a State across the board undoing those other exchanges which required considerable effort just a very few years ago, was deemed by the State director to be an unwise use of resources at the time.

Mr. Noonan. Thank you.

Mr. Jarvis. If I may respond to that, the report also notes that the alternative selected was done because BLM, as you properly noted, wanted to exchange mineral rights elsewhere, where the acreage might be more equal. However, the values would not be equal, and it said that in order to be implemented, the option would require amendment of the Federal Land Management Policy Act in order to get around the requirement in existing law for equal value exchange.

I also note that in the new parks in Alaska where the state inholdings exist in conservation units, the policy has been, that the BLM or other nonconservation system land be used for purposes of exchange. The BLM policy and the policy of the Secretary, however, is that no BLM land will be used for exchange but only other parkland.

It seems to us that accomplishing land exchanges by giving up one piece of parkland in order to acquire another piece of parkland is merely transferring the problem. It is not solving the problem.

Mr. Noonan. Do you want to explain it?

Mr. Bibles. Yes; I would. The mineral problem in Wyoming is that Wyoming took the view that since the revenues from the coal lands were shared 50 percent with the State, that instead of getting 7 million dollars' worth of equal value in the exchange, they wanted 14 million dollars' worth. That is why an equal value exchange did not work in that situation.

The State does not own 50 percent interest in the coal after the coal is sold or the royalties are collected. The sharing is the revenue, not in the coal resources, so we could not with any kind of public trust responsibility agree to exchange 14 million dollars' worth of coal lands for 7 million dollars' worth of land. Thus, I think that your characterization there is not completely accurate.

In the case of Alaska, last winter we just completed an exchange for the Gate of the Arctic National Park. We did exchange some

BLM-administered lands in the national petroleum reserve in Alaska to acquire that lake area.

Mr. NOONAN. Any additional questions?

Mr. READY. Lyle Ready—I wondered if you or someone on the panel could briefly summarize what actions are underway to facilitate and expedite the exchange business and exchange procedures, in categorizing them into statutory exchanges or administrative changes?

Mr. NOONAN. We are hopeful that out of these workshop discussions will cone just such a process. I would like to have comment from any of the four panelists in direct response to that question.

What efforts are now underway within your respective agency individually or collectively to expedite and improve the exchange process?

Mr. BIBLES. I mentioned that we are looking at streamlining BLM exchange procedures. One of the things I mentioned concerned resource equipment or equal value when it involved mineral estate. We, working jointly with USGS and the MMS, are looking at that as a way of streamlining the exchange procedures to come to a better way of determining what the mineral values.

We are also looking at simplifying the public notice process in using a plan amendment where we have to go through the plan amendment process rather than going through all the plan amendments in order to facilitate the exchange and then proceeding with our notice of realty action. In those notices, we are looking at the option and the possibility of using one notice to accomplish that.

We are also looking at some other publication notices that would smooth out the process instead of putting in some mandatory timeframes that have not really proven to be that successful in an exchange, so we think there is some streamlining that we can do. We hope to be proposing some regulatory changes in the very near future.

We have been watching very carefully the results of this workshop and the last one for other ideas.

Mr. NOONAN. Would any of the other panelists like to comment?

Mr. KRIZ. Yes, Pat. One of the obstacles to exchange is simply the lack of familiarity with the exchange process on the part of the people that have to perform the exchange, and so as part of the implementation of the Department's and the National Park Service, the land protection policy, will be a training program, and I would expect that in that training program some orientation on the exchange processing will be included.

Mr. NOONAN. Do you have any comments, Mr. Lindholm?

Mr. LINDHOLM. Yes. We are also looking at an increased training program for our people in the field on the exchange process. Even though we make probably a larger number of exchanges than the other agencies, 160 does not put one exchange in each district out on the ground so if somebody walks into a district office and says I would like to make an exchange, the ranger probably shakes his head and wonders what he is going to do, so we do need that specialist in the field to be well trained and through that process we can shorten the time period it takes to make an exchange. Many of the things we are required to do in exchanges in law are an administration policy in order to accomplish other things which will be in the training program.

Mr. NOONAN. Thank you. Any comment, Walt?

Mr. MCALLESTER. No. I think that we will share in the Park Service's training effort and beyond that we will do the best we can.

Mr. NOONAN. Any other questions from the floor?

Mr. PIKE. I have a comment.

Mr. SHANDS. Bill Shands, the Conservation Foundation. When you are evaluating land for disposal do you have a special policy direction as to how to assess the land adjacent or very close to the national parks, either with an eye toward preventing adjacent land conflicts or conflicts between the use after sale of those lands?

Mr. BIBLES. I am not sure, Bill, that I can completely address that. As we begin the land use planning process, the other affected Federal agency, State, local, and county governments, are all included as part of the overall scoping as to who might be affected by those lands, and I am just not aware of an instance, although I am sure there must be some that exist, where the park superintendent or the park people are involved as we go through the land use planning process. It was mentioned that we are working with the forest service, in fact, on jurisdiction adjustments in some cases. We have a very similar mission. There are some pieces of land that would be better if it were included within the national forest system or vice versa, and we have a number of those proposals underway today that do require congressional action. These lands are either added to or subtracted from the national forest system, but that jurisdiction adjustment program has I think a fine potential to do some things, and then, of course, the land use planning certainly has to coordinate with the adjacent property owners, whether it is a State, the Park Service, and I think that is the tool that is used in that process.

Mr. NOONAN. Additional questions from the floor? I have one additional question. Dean, we have been working you pretty hard. What is the status of the Project Bold in Utah? You might describe briefly the scope of it and what is the status?

We discussed that at our last workshop and a year later I am curious if it is further along or derailed or what.

Mr. BIBLES. I am not sure—for those of you that are not aware what Project Bold is, it is a proposal by the Governor of Utah to combine the land exchange provisions with the State of Utah and the Federal Government, and also the indemnity selection rights that the State still has outstanding. Some 225,000 acres of school trust land have not yet passed to the State because the land had already been included in some federal system. Thus the Federal Government still owes the State this amount of land.

The Governor had proposed under Project Bold to make land exchanges in order to lock up the Federal holdings and block up the State holdings. That has gone through a significant amount of public review within the State of Utah, and at the very last, right now, I am not sure that I could give you the latest update as of June 15 as to where all of those proposals are.

In the meantime, we do have some individual exchanges with the State of Utah that we are proceeding on that have a high priority, and some indemnity.

Mr. NOONAN. It is fair to say it is still in the planning process?

Mr. BIBLES. It has not been dropped, if that is your question. It is still being actively thought about in Utah.

Mr. NOONAN. Well, I would like to take this opportunity to thank the panelists and the respondents for their very enlightened comments. I would like to draw attention again to the four panelists who we benefited from this morning. Each of them has many years of professional experience, and in my experience it has been a privilege and pleasure working with them. I know we appreciate their efforts on behalf of our resource planning program in America.

We will now recess, and we will come back at 1:30 in this room. Thank you.

[Whereupon, at 12:25 p.m. the workshop was recessed, to reconvene at 1:30 p.m. on the same day.]

AFTERNOON SESSION

Mr. REILLY. We will call this session, panel No. 5 on innovative land protection and management, to order.

I think that we have discussed any number of possible new approaches, techniques and concepts in general. The purpose of this session, to which the paper responds very precisely, is to get into some of the details of how, once the concept is proposed and discussed, might it actually be implemented on the ground. What are the specific obstacles and problems to affect administration of some of the innovative land techniques and approaches? Beginning the panel is William Shands, senior associate of the Conservation Foundation.

STATEMENT OF WILLIAM E. SHANDS AND CHRISTOPHER J. DUERKSEN SENIOR ASSOCIATES, THE CONSERVATION FOUNDATION

Mr. SHANDS. Thank you, Bill. I would have to say at the outset that this paper was prepared by both myself and Chris Duerksen, another senior associate with the Conservation Foundation.

This workshop yesterday and today and certainly the previous one last summer delved very deeply into the kind of techniques that might be used to supplement fee acquisition of land, but it appears to us, and this is the thesis of the paper really, that that is only the first step, that to be effective; alternative approaches to land protection, using measures other than outright land purchase depend on efficient and effective administration after the necessary easements are in place.

When the Government acquires land in fee, the needs for management of the ground are quite well known, but very little attention has been given to the needs for administration of these supplements to fee approaches, for such things as monitoring enforcement and certain kinds of incentives. I stress that this paper is, as we see it, sort of a beginning to start people thinking about these kinds of administrative needs, after the techniques are in place.

We believe that by increasing the effectiveness of less-than-fee techniques, more widespread use of these techniques would be encouraged. In particular, administering agencies utilitizing less-than-fee techniques should pay greater attention to monitoring and enforcement or use restrictions, and to cooperate with private landowners and State and local units of government.

Further, we believe there is a wider need for incentives or sweeteners to support less-than-fee techniques, therefore, encouraging and assisting other government and private landowners to manage lands to achieve the mix of public and private benefits. Finally, we believe there is a desperate need for staff expertise to provide these management services, a need that was certainly brought out this morning in the comments of several Government agency representatives.

To be effective, less-than-fee techniques do depend on continuing management, and the most important are monitoring and enforcement. The most necessary management components include making sure that the landowners abide by the terms of an easement or comply with the applicable land use regulations. Consistent monitoring and enforcement are essential to assure that the restrictions are effective. Consistency and certainty also helps to assure evenhanded treatment of affected property, thereby eliminating unfairness and hard feelings while at the same time increasing effectiveness of the restrictions by insuring that owners know the rules of the game.

From the standpoint of the administering agency, monitoring enforcement imposes significant administrative challenges, raising serious problems of consistency and equity. The landowner naturally resents believing that he is being policed more stringently than his neighbor. There are some things that can be done to mitigate this resentment.

At the Sawtooth National Recreation Area, for example, the Forest Service has computated data about enforcing the easement over time. Analysis should improve the consistency with which these easements and other kind of techniques are administered.

Intergovernmental cooperation is a second major need. An agency administering less-than-fee techniques requires a continuing relationship not only with the affected landowners but with the affected State and local governments. This is a serious problem, we believe, in the imposition of these less-than-fee techniques. For example, in Cuyahoga Valley National Recreation Area, the National Park Service must deal with no fewer than 25 jurisdictions ranging from 2 regional councils of government to 7 counties and a number of other kinds of jurisdictions. We believe that there is a need in such areas for some kind of coordinating council employing personnel that can talk honestly and candidly, and understand the needs and concerns of State and local officials and planners.

We believe that incentives will help the land protection administrative process work better. By using less-than-fee techniques, the administering agency establishes a long-term relationship with landowners and the State and local agencies. Sweeteners, such as grants and aid and other assistance to private landowners can help to keep this relationship a cooperative one. At Sawtooth National Recreation Area where there is a rather ambitious easement acquisition program underway, the Forest Service also has the authority and some limited money to make direct grants to landowners to help them improve their property, thereby making the property more consistent with the scenic values of the area, and benefiting the private landowner. This has resulted in many landowners becoming friends, if you will, with both the Forest Service and the easement program.

Grants and aid to local governments are another area where there is a need, and some public as well as State and local benefits. The identification of an area for special protective treatment may increase local and regional planning needs. Planning agencies, particularly these days, do not have a lot of money, nor do they necessarily have technical expertise to do the kind of planning and enforcement administration that is called for because their area has been designated a special place. For that reason, we believe that the Federal Government or the administering agency should provide grants to the State and local government and technical assistance to landowners. Assistance could be used to help them manage their land better in terms of timber, or to create wildlife habitat, or perhaps even to provide some public recreation.

Finally, cooperative agreements between a wide range of agencies and private sector organizations as well is important—it would be a rare agency that could provide all the services that the people and other government units in the area need. For this reason, we believe that there is a strong need for cooperative agreements with a broad range of interests to help them jointly manage an area.

One thing that should be considered carefully is the cost of incentives. Incentives should not be raised without some caution. That need for caution, which was brought up a little in the cost effectiveness discussion today, is important when considering some of these techniques. Incentives are not free. That is, they do not accomplish their goals without costs, and when evaluating cost incentives, several questions have to be answered. What will be the dollar cost of grants and technical assistance? What will be the intangible costs of regulatory incentives? When you are transferring development from one place to another using transferable development credits, will this just shunt undesirable development somewhere else where it is equally objectionable? Will incentives be more generous than necessary to accomplish the established goals? Finally, at what point does the cost incentives become so great as to cast doubt on the desirability of using less-than-fee techniques in the first place?

In that regard, I might just mention that there is a common belief that if you buy the land outright you have long-term management costs attributed to it that accompany ownership. However, if you use alternative fee or supplemental fee techniques, that then there are no ongoing management costs. We submit that is false, there are a substantial ongoing management costs using fee techniques, and when you are doing a cost/benefit analysis, all those costs of administering overtime, the easements, the monitoring, in the case of the proposal that we have made here, incentives, technical assistance, should all be factored against the cost of long term, on-the-ground management of the land as if it were held in full fee.

We suggest that if incentives are to be made more widely available, funds will be needed. If they are to be used effectively, there must be some assurance that the funds will be available for an extended period. We would propose that a fund be established and administered by a land policy group that would be akin to a grant system. The administering agencies could submit proposals for the use of that fund through the land policy group. They would have to do that as part of a land protection program and plan. The fund proposals would be carefully considered and then the grant would be made to the administering agency to use for a wide range of implementing programs.

The administering agencies need expertise to manage these programs. Again, I think it was obvious this morning that this is not now the case. We suggest several things that might be done. One, believing that within many of the land management agencies there are people who understand the use of these techniques, expert assistance teams should be organized. They can be brought together or sent out to a unit or an area that requested the assistance. It would be something along the lines of the interagency fire squads that go out during the summertime to fight forest fires. This might be a way of bringing expertise to bear quickly, and with the degree of strength to meet these needs.

Finally, we think there should be personnel policies to reward the people who have expertise in the administration of these less than fee areas. Right now the various people who have the expertise to do this professional work quite often find themselves in dead-end jobs or jobs that are not in the mainstream of the management agency itself. We believe that it would be very useful to construct a system in which they were brought closer to the mainstream of the staffing requirements within the agency.

[The prepared statement of Mr. Shands and Mr. Duerksen follows:]

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THE ADMINISTRATIVE CHALLENGE OF LAND PROTECTION

by William E. Shands and Christopher J. Duerksen*
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SUMMARY

To be effective, alternative approaches to land protection (that is, measures other than outright land purchase) depend on efficient and effective administration after the necessary tools (such as zoning and easements) are in place. When a government acquires land in fee, the need for future management is well understood. When less-than-fee techniques are employed, however, little thought is typically given to the need for day-to-day management by the administering agency.[1] This paper is intended to draw attention to those needs. It makes four principal points:

- Increasing the effectiveness of less-than-fee techniques could encourage more widespread use.
- In particular, administering agencies utilizing less-than-fee techniques should pay greater attention to monitoring and enforcement of land use restrictions and to cooperation with private landowners and state and local governments.
- There is need for wider use of incentives and "sweeteners" to support less-than-fee techniques, thereby encouraging and assisting other governments and private landowners to manage land to achieve a mix of public and private benefits.
- Staff expertise is needed to provide these management services.

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* Shands and Duerksen are Senior Associates with The Foundation. John Noble, Phyllis Myers, and Michael Mantell contributed invaluable suggestions in the preparation of this paper.

Introduction

There is a great deal of interest today in less-than-fee techniques for land protection: land-use restrictions, easement purchases, tax incentives, and the like. Several arguments are commonly advanced for the use of these techniques. They have the potential in some situations for protecting public values at less cost than outright acquisition. They may also defuse landowner opposition to land protection and enlist the owner as a cooperating partner in the effort. At the same time, these techniques can sometimes keep land in production and on the property tax rolls.

To be effective, less-than-fee techniques depend on continuing management. It is not enough simply to buy an easement or enact a regulation. Rather, there is need for continuing day-to-day administration after these measures have been put in place. Administration encompasses monitoring and enforcement, intergovernmental coordination, and the use of incentives and "sweeteners" to encourage landowner cooperation and land stewardship.

Monitoring and Enforcement

Monitoring and enforcement are the most obviously needed management components. These include, for example, making sure that landowners abide by the terms of an easement or comply with applicable land-use regulations. Consistent monitoring and enforcement are essential to assure that the restrictions are effective. Consistency and certainty also helps to assure evenhanded treatment of affected property owners, thereby eliminating unfairness and hard feelings while at the same time increasing effectiveness of the restrictions by assuring that owners know the "rules of the game."

From the standpoint of the administrative agency, monitoring and enforcement imposes significant administrative challenges, especially where numerous properties are subject to regulations or easements that vary significantly from one property to the next. Particular difficulties arise when property owners are unaware of the exact nature of restrictions on their land. For example an owner who has purchased land with a public easement may not be aware that he is violating use restrictions when he adds on to a structure or cuts down a tree. Consistency and equity in enforcement can also be a problem; a landowner naturally resents it when he feels he is being policed more stringently than his neighbor.

Experience suggests possible responses to these problems. At Sawtooth National Recreation Area (NRA), for example, the Forest Service maintains detailed records of original negotiations for over 60 easements for use in later interpretations. It also carefully documents how each easement is enforced once in place. In this way, when an owner proposes a development or change in land use, the Forest Service can respond quickly and consistently to the request.[2] To make this system even more efficient, the Forest Service has plans to computerize information on individual easements.

Sawtooth has also instituted a program of monitoring land sales records and maintaining close contact with real estate agents so the agents can tell potential buyers to keep them informed about the easement program and its consequences. In this way, purchasers of land subject to restrictions are more likely to be informed of the restrictions when they make the decision to buy property subject to a NRA easement.

What of agencies that do not at present have adequate personnel to monitor easements and other similar restrictions? The historic preservation field offers a useful example. Local voluntary preservation groups often assist local governments in monitoring facade easements on landmark buildings, in effect acting as the "eyes" of the administering agency, a preservation commission. In some instances, the voluntary organizations actually accept the easement and assume full responsibility for monitoring and enforcement.

Intergovernmental Cooperation

An agency administering less-than-fee techniques requires a continuing relationship not only with affected landowners but also with affected state and local governments.[3] Enlisting the cooperation of a multiplicity of agencies and units of government is sometimes difficult. For example, in Cuyahoga Valley National Recreation Area, the National Park Service must deal with no fewer than 25 jurisdictions ranging from two regional councils of government (in the Cleveland and Akron areas) to seven counties concerned about the impact of the park on tax revenues. At Santa Monica Mountains, the Park Service must cooperate with six local jurisdictions, 11 state agencies and an assortment of sanitation, water, transit, and air quality management agencies. In addition, the California Coastal Commission has regulatory power over the coastal zone, while Los Angeles and Ventura counties have regulatory responsibility for most of the NRA.

One approach to the coordination issue that has been used in several areas is establishing a voluntary coordinating body to improve communication among the administering agency and affected state and local governments. The Cuyahoga Valley Communities Council, for example, was organized to provide a forum for local governments and National Park Service representatives to discuss park issues of mutual interest and provide accurate up-to-date information to citizens. The Council has provided information about local easement programs, new state enabling legislation affecting local taxation of easements, and federal payments in lieu of taxes to local governments.

Intergovernmental cooperation might also be advanced by providing legal assistance to governments that use their regulatory power to protect nationally significant lands--as in the Pinelands National Reserve and the Cape Cod National Seashore. Recent court decisions, including several by the U.S. Supreme Court, make clear that land-use regulatory authorities may have to pay money damages if a court determines that their land use regulations are overly strict.[4] The result is that some state and local governments may be hesitant when asked to regulate in the national interest. One possible response to this problem would be for the administering agency to request the Lands Division of the Justice Department to intervene on behalf of local or state governments whose land-use regulations have been challenged in court. Such assistance would be welcomed, particularly by localities that lack the resources to mount a sophisticated legal defense in complex land-use litigation.

On the Need for Incentives

In addition to improved monitoring, enforcement, and intergovernmental cooperation, any of several incentives may help the land protection administrative process work better. By using less-than-fee measures, the administering agency establishes a long-term relationship with the landowners and state and local agencies; "sweeteners" can help to keep this relationship a cooperative one.

The need for incentives to enlist the landowner as a cooperating partner is especially great where protection mechanisms impose severe restrictions on land use. Resentment of controls by some landowners is well documented; it can be acute when purchasers buy land without understanding the consequences of easements or other restrictions. In such cases, incentives can, in the words of Joseph Petrillo of the California Coastal Conservancy, "take the sting out of the regulatory process."[5] Sweeteners can also be useful to secure affirmative action by the property owner--for example, the provision of wildlife habitat or maintenance of a trail.

Equipped with authority and funds to provide grants and technical assistance and supplemented by cooperative agreements and tax incentives, the administering agency could creatively develop programs designed to meet the needs of individual landowners and also contribute to the protection efforts of state and local governments. Several types of incentives might be considered:

- Grants-in-aid and other assistance to private landowners. One possibility is for an administering agency to make small grants-in-aid to landowners to help pay for improvements to buildings and land that reinforce public objectives. At Sawtooth National Recreation Area, for example, the Forest Service has the authority and money to make small grants to landowners to help finance improvements to structures so they blend into the ranch/valley scene. Forest Service officials say this program has won friends for the NRA's easement acquisition program while enhancing the valley's scenic values at relatively low cost. A form of grant-in-aid also might be used to address another difficult issue: securing public access to private lands. In some instances landowners who otherwise would agree to allow public access to their land are hesitant to do so because of the threat of damage awards if a user is injured. To ease this problem, Congress could make clear that park administrators can enter into liability indemnification agreements under which the government would pay damages awarded against a landowner.[6]

- Grants-in-aid to local governments. The identification of an area for special protective treatment may increase local and regional planning needs. In addition, local agencies (and in some cases, multicounty planning agencies) commonly bear responsibility for providing infrastructure, transportation, and emergency services. Yet many local and multicounty agencies do not have the staff or financial resources needed to undertake planning and regulatory responsibilities. Perhaps the most ambitious use of incentives to stimulate local planning occurs in New York State's Adirondack Park, where the Adirondack Park Agency pays up to 87 per cent of the cost of preparing local land use plans. The agency also develops model ordinances and helps train local zoning officers. Over a ten-year period, the agency provided assistance to 67 towns in the park at a cost of about 1 million.[7] In a few instances (notably at Pictured Rocks and Sleeping Bear Dunes National Lakeshores), Congress has given federal land managing agencies authority to provide grants to local regulatory and planning agencies. This authority has not been extensively utilized, however.[8] At Sleeping Bear Dunes, the Park Service helped fund economic impact studies for two counties soon after the park was established a decade ago; this authority has not been used since. While a Park Service official explained this lack of activity by saying, "No one has asked us," he also acknowledged that the park had no funds with which to respond. "We would have to go back to Washington."[9] The provision of grants to help local governments deal with their problems might create a more constructive atmosphere for dealing with overall management issues.

- Technical assistance. Only rarely does a landowner have the expertise necessary to manage land so as to both maximize personal benefits and protect environmental quality. The need for this expertise is intensified in areas where special management is called for. Landowners may require advice on sound timber management, protection of water quality, the manipulation of vegetation to enhance wildlife habitat, the design and siting of buildings to protect scenic features, or the development of recreation facilities. To meet these needs, an administering agency may find it worthwhile to provide assistance, either directly or by assuring that the landowner can get it from other agencies or private organizations. Local governments may require special assistance too, and the administering agency may find it advantageous to assign staff to work with the local government's personnel on discrete projects. Likewise, local governments might be encouraged to assign staff to the administering agency when they have special expertise to contribute.

- Cooperative agreements. Because of personnel, budgetary, or other constraints, the administering agency will probably not be able to provide all the services required by local landowners. One possible response is for the agency to enter into cooperative agreements and contracts with landowners, other governmental agencies, and for-profit and non-profit organizations. Local governments are using such cooperative agreements increasingly to share costs for services such as fire and police protection. Experience with these intergovernmental agreements could be a useful guide in a land protection context.

- Other Financial/Regulatory Incentives. Other financial and regulatory incentives could be employed as well. Congress might enact legislation patterned after the provisions of the 1981 Economic Recovery Tax Act of 1981 that provide federal income tax credits for preserving or rehabilitating historic landmarks. Thus, landowners entering into natural area management agreements might be given special tax deductions, or those developing in areas of national significance might be denied depreciation and interest expense deductions on new structures on the property. (The paper on tax incentives, to be presented by another panelist, focuses on these possibilities in greater detail.) Regulatory "incentives" can also be a useful tool to advance land protection goals. Examples are the use of transferable development credits as is envisioned in the Pinelands National Reserve and in use at Santa Monica Mountains NRA, as well as similar techniques such as the use of development/density bonuses for protecting part of a developable site.

The Cost of Incentives

Incentives should not be embraced without some caution. They are not "free"; that is, they do not accomplish their goals without costs. To evaluate costs of incentives, several questions have to be answered:

- What will be the dollar cost of grants, technical assistance, and tax incentives, and where is the money going to come from? Are taxes going to be raised? Are other programs going to be cut? In the case of tax incentives, dollar costs may be particularly difficult to estimate.
- What will be the intangible costs of regulatory incentives (e.g. such as transferable development credits)? Will transferred development create objectionable impacts somewhere else?
- Will incentives be more generous than necessary to accomplish established goals? It has been alleged, for example, that government subsidies to private developers under the Urban Development Action Grants program are sometimes more generous than necessary to accomplish the intended results.
- At what point does the cost of incentives become so great as to cast doubt on the desirability of using less-than-fee techniques in the first place? Or, if the choice is between less-than-fee techniques and outright public purchase, would purchase be even more expensive? (One federal land manager told us that in his experience the cost per acre of managing land acquired in fee exceeds the cost of overseeing land subject to easement.)[10]

Further, in purely administrative terms, is there a risk of misuse of grants-in-aid funds by administrators in the field or of the appearance of misuse? Might grants be used to simply "buy off" a troublemaker? And what kind of criteria will prevent favoritism in making assistance grants?

Balanced against the costs of incentives are several potential benefits. As already noted, a principal potential benefit of sweeteners is to elicit the landowner cooperation needed to make some kinds of restrictions effective. In addition, the use of less-than-fee techniques plus incentives may be the only politically acceptable approach to the protection of some significant areas (e.g., the Pinelands, where large-scale federal acquisition appeared unacceptable, yet regulations alone seemed insufficient to provide needed protection).

The precise costs and benefits of using incentives cannot be determined with precision. Nevertheless, they may, at least in some situations, prove more cost-effective than any likely alternative--such as relying simply on regulation or purchasing land outright. This possibility seems great enough to warrant expansion of the very limited experimentation already taking place with such techniques--in areas such as the Pinelands and Sawtooth NRA. To make this experimentation work, there is need for funds, expertise, and perhaps also for Congressional action.

Funding

If incentives are to be made more widely available, even on an experimental basis, funds will be needed. Moreover, if they are to be used effectively, there must be some assurance that funds will be available for an extended period. At least at the outset, however, the amounts of funding needed should be quite small.

A specific fund--perhaps a portion of the LWCF or proceeds from user fees--that would make additional funding available to administer innovative supplemental acquisition programs could be a spur to wider usage. Some park managers are hesitant to commit their increasingly limited funds to protection techniques they know little about and in which they have limited confidence. We propose that a Land Protection Fund be established within the Department of Interior, administered by the Land Policy Group,[11] that would be available to pay for technical assistance, personnel "loaners" to local government, and so forth that are part of an approved land protection plan submitted by an administering agency.

Expertise

When lands are protected by easements, regulations, or other less-than-fee measures, officials of the administering agency need skills that differ in some respects from those used in managing publicly owned lands. Public-private partnerships--of administering agency officials, landowners, state and local officials--are the key to successful management of these lands. And specialized skills and experience can be invaluable in establishing and maintaining these partnerships.

Staffs at many public land units may not possess those skills. Even if less-than-fee measures have already been tried at a unit, the attention of staff members is almost certain to have been focused on managing the unit's publicly-owned lands. How, then, are skills needed to administer public-private partnerships to be made available?

- Organization of Expert Assistance Teams: The National Park Service and other agencies have a number of people with expertise in administering less-than-fee measures, but they are scattered throughout the country. This is unfortunate, because there is a need for instant expertise when a new unit relying on easements, zoning and the like is established, and for continuing expert advice on administration and implementation. To deal with this problem, the Department of the Interior could organize expert assistance teams from the NPS and other land management agencies that would be available on short notice to advise federal units (and possibly non-federal units when asked) that are implementing land protection plans. These teams would help units establish efficient and effective administrative processes, drawing on practical experience from other areas. Such teams would be analagous to the inter-agency fire protection units organized from personnel from among the federal land management agencies that are on call to combat forest fires. Separate expert teams also could be organized within each administrative region of the NPS to provide information and advice on less-than-fee techniques, successful approaches and pitfalls, and legal developments.

- Personnel policies to reward less-than-fee expertise. Even more important in the long run may be the establishment of agency personnel policies that encourage and reward specialization in the use of less-than-fee techniques. A separate job classification in the application of less-than-fee techniques and management of those areas they are used in--comparable to that established for resource management specialists within the National Park Service--is needed for people who want to develop expertise and management skills in this field. At present, agency personnel who develop expertise in the use of these techniques may find themselves in a dead-end job; if they seek advancement, they may have to switch to other types of units.

Legislation

Some of the suggestions detailed in this paper can be implemented without new legislation. For example, under existing law there is nothing to prevent federal agencies from offering informal technical assistance to a land owner or the best way to manage a critical environmental area bordering a unit.

Other measures discussed, however, cannot go forward without legislation. These include tax incentives and the establishment of a stable funding source for less-than-fee measures.

Congressional initiatives could also be useful to spur wider use of other measures. For example, a resolution of the Senate Committee on Energy and Natural Resources could itself provide useful support for experimentation with less-than-fee techniques.

FOOTNOTES

1. Although the "administering agency" may be federal, it might also be a state or local entity.

2. Interview by Chris Duerksen with Al Ashton and Deon Wells, Sawtooth NRA, August 1982.

3. For a more complete discussion of mechanisms to help reconcile conflicts between public lands and neighbors, landowners and communities, see William E. Shands, Federal Resource Lands and their Neighbors, The Conservation Foundation, 1978.

4. San Diego Gas and Electric Co. v. City of San Diego, 101 S. Ct. 1287 (1981); Hernandez v. City of Lafayette, 649 F. 2d 1188 (5th Cir. 1981), aff'd on rehearing, 649 F. 2d 336 (5th Cir. 1981); Burrows v. City of Keene, 432 A.2d 15 (N.H. 1981).

5. Petrillo, Joseph E., Workshop on Public Land Acquisition and Alternatives, Senate Committee on Energy and Natural Resources, Oct. 1981, p. 418.

6. For an excellent discussion of the many aspects of the access issue, see Opportunities for Enhancing Public Benefit from Private Land, Proceedings from the 9th Annual Airlie House Conference on the Environment (Standing Committee on Environmental Law, Division of Public Service Activities, American Bar Association, 1980). Opportunities for access could also be enhanced by a variety of other means, such as tying them to federal tax incentives.

7. Adirondack Park Agency Annual Report--1980, page 8 and Table 6, and Richard A. Liroff and G. Gordon Davis, Protecting Open Space: Land Use Control in the Adirondack Park (Cambridge, Ballinger Publishing Company, 1981).

8. H.R. 5552, "The National Park Protection Act", introduced by Rep. John Seiberling, would provide blanket authority to the Park Service to provide grants up to $50,000 to units of local governments, as well as technical assistance.

9. Telephone interview with Max W. Holden, resources management specialist, Sleeping Bear Dunes National Lakeshore.

10. Interview with Al Ashton, superintendent, Sawtooth National Recreation Area, August 1982.

11. There are several reasons why it would be appropriate for the LPG to administer the funds. First, the LPG has a record of promoting less-than-fee techniques and could be expected to support innovative approaches. Second, placing a single entity in charge of the fund would enable DOI to monitor the use of less-than-fee techniques. Finally, the single entity oversight concept would help ensure that money is spent on proposals that are part of an overall less-than-fee techniques plan rather than on one-shot schemes.

Mr. REILLY. Thank you, Bill. We turn now to the respondents, Prof. Louis Twardzik, Michigan State University, Department of Parks and Recreation Resources.

STATEMENT OF DR. LOUIS F. TWARDZIK, MICHIGAN STATE UNIVERSITY, DEPARTMENT OF PARKS AND RECREATION RESOURCES

Dr. TWARDZIK. Thank you, Mr. Noonan. Mr. Chairman, I will submit a formal response for the Record. At the outset I would like to state that I believe that the authors fully met their objective of calling attention to the needs of land managers in managing systems that include less than fee acquisition, and they did it in good, clear fashion. Operating under the constraints of time, I will select a few items that I think are worthy of attention at this point, some of which have been covered by the authors, and several that they did not.

First is monitoring the less than fee system. The authors suggest that the manager would be well served in these matters by providing for them some outside expertise. In fact, the analogy of the fire protection strike force was recommended. I would hesitate to fully agree with that approach because it seems to me that if we expect managers to use less than fee techniques as part of the general, ongoing management responsibilities, we should hold them more responsible, and not go automatically to the outside experts. That is the only reservation I have on that subject.

The second has to do with providing additional incentives. I fully agree with the authors that we have paid in one way or another for this cooperation. We are expecting that should be developed with other agencies and landowners. I am especially taken with their idea of making available incentives for local planning agencies to assist in developing continuity and local involvement and landowner cooperation in monitoring what will ultimately become a complex management program in most of our resource areas. I think the idea of incentives is worthy of much greater consideration than it has been given in the past.

The next issue was not raised by the authors as fully as it might have been, it was alluded to in passing. This issue has to do with education and training of resource managers, and research that is needed to support them. This is a serious omission in the report, and if we are expecting a significant change in the way we manage lands today and in the near future, I think we have to spend considerable amount of time in being concerned with the background, education and training that our future managers should bring to their responsibilities. The tradition that has served us well over the past of employing a bright person and keeping him on until he attains permanent status and then advancing through the ranks probably will not be as useful in the future without a structured education and training background. There are too many new ways, too many new techniques. The authors bring out many of them. These will require new styles of management and I think we need to spend a considerable additional time in addressing this issue.

Recreation research is recognized I think by most as being a very haphazard kind of approach, especially through the land managing agency, except for the Forest Service. I am convinced that if we are going to help land managers meet their needs we have got to have a research program that is not going to be exclusively biological as it has in the past. Cultural and social implications have to be addressed if we are going to be able to followthrough on any of the recommendations brought out in this report.

Another issue has to do with impacts on local development. This is an important consideration because it is probably one of the most serious problems faced by many communities located near the recreation area. They face the uncertainty that often accompanies any kind of Federal interest or Federal acquisition programs. I am advised by a number of business people and investors that this uncertainty effectively chills the investment interest in the business community and plays havoc with those who are trying to develop plans for the nearby community. In order to not create this kind of a negative response in the community from land acquisition that takes place in and around parks, every effort should be made to assure full communications agency actions plans and on progress. If there has ever been a need for an upfront kind of program, it has to be with land acquisition. Local people and investors are fearful, and entire economies are sometimes thrown into chaos because of the lack of comprehension of what is really happening in the land acquisition program.

[The prepared statement of Dr. Twardzik follows:]

RESPONSE TO: THE ADMINISTRATIVE CHALLENGE OF LAND PROTECTION

by Louis F. Twardzik*

The authors' stated objective is to call attention to the management needs of those public agencies that acquire land in less than fee. From my reading of their paper, they succeeded admirably. One seldom finds recognized authors representing prestigious organizations who are willing to address issues about the management of recreation resources.

I am confident that the authors were sorely tempted to delve into the legal techniques and ramifications with which the agencies can expect to be confronted as they move further into less than fee acquisition programs. Fortunately, they didn't. I can assure them that their staunch adherence to a clear cut concern for management throughout their paper is appreciated even though the temptation to fill us with the law, planning and policy must have been great.

I believe that the relative lack of importance we have accorded to the management of recreation resources deserves some additional comment. Until Marion Clawson introduced a systematic approach to understanding recreation resources in the late 1950's, our perception of what they consisted of and what to do with them were limited to those experienced in managing them. And the more experienced, the more expert were the managers of parks, forest and wildlife areas, in all matters relating to policy, planning and development of recreation resources. This tribal and ultimately guild phenomenon of passing on knowledge from the master to apprentice as a way of managing parks was shattered by the writings of Clawson and Barlowe.* Their work encouraged other land economists to direct some of their interest from crops to recreation resources. Through their writings, these social scientists showed us how to look at parks with some sense of objectivity. Their new approach to recreation resources helped set the stage for the establishment of the National Outdoor Recreation Resources Review Commission (ORRRC) and the enormous contribution it made to the nation's awareness of its recreation resources.

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*The Administrative paper was prepared by William E. Shands and Christopher J. Duerksen, Senior Associates, The Conservation Foundation, Washington, D. C. This response was prepared by Professor Louis F. Twardzik, Department of Park and Recreation Resources, Michigan State University, and was presented at the Workshop on Land Protection and Management sponsored by the U. S. Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands and Reserved Water, June 14-15, 1982, Senate Office Building, Washington, D. C.

June 1982

Unfortunately, the pendulum, as it often does, went too far, and since ORRRC, resource managers and the management needs of recreation resources were seldom adequately addressed or heard. Today, we seem to spend most of our time and concern on the policy and planning aspects of resource development by people who usually have no management background and who seem unwilling to bring whatever contributions management can make to the early work required in developing policy and plans.

I believe that this extreme position is largely responsible for the national propensity for public plans and programs that are too often launched at great expense but fail to reach the fruition we call public benefits. Simply put, it is often a lack of management expertise in the policy and planning phases of resource development that is responsible for our failure to successfully implement many public programs in recreation resource development, including those recommended by ORRRC; research, grants-in-aid, education, technical assistance. We are obviously in need of an approach to recreation resource development that combines management expertise with the conceptual talents of planners and policy-makers.

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*Marion Clawson, "Crises in Outdoor Recreation." American Forests, March, 1959. Raleigh Barlowe, Land Resource Economics, Prentice Hall, New York, 1958.

I therefore feel that the greatest value of the paper is the authors' recognition of the imperative of management in all matters relating to recreation resource development and protection.

The paper itself does not attempt to advance any new techniques in acquiring land in less than fee. More importantly, it 1) recognizes that there is a range of such acquisition techniques already available to the resource manager; 2) recommends how the manager may more effectively manage these less than fee acquisitions; 3) recommends kinds of agency assistance to help the manager in fulfilling his responsibility.

In recognizing the availability of adequate authority to offer a variety of "sweeteners" to landowners and the reluctance of managers to use them, the authors surface one of the most serious problems facing the nation in its efforts to effectively acquire and manage public lands and that is the lack of enlightened initiative on the part of many managers in fulfilling their responsibilities.

> I am not discounting the dedication of our predecessors to the field of parks and recreation, but I am decrying the lack of our vision beyond the original creative thought responsible for conceiving a national park, a national forest, a central park, or a playground. Except for those original concepts of recreation resources, the past 100 years have been characterized by little else than a reluctance to do other than follow those same original ideas despite the enormous changes that have occurred everywhere, everyplace, and in everything we have done as a people during the past century. More precisely, we have merely reacted to pressures by the people. We have not led; we have not provided alternatives for the people. It's been more of the same, or nothing. That kind of leadership only required finding ways of convincing the public to provide more money in order to provide more of the same -- the same playgrounds, parks, athletic fields, natural areas, state parks and national parks -- to serve the same segments of the public.
>
> Only enlightened professionals can bring order out of this state of chaos. Each of us has a role in this -- regardless of the agency and regardless of the level of government. But most importantly, will the role be that of an enlightened professional or a responding professional. The responding professional, of course, is the person who brings basic credentials to a resource management position and

> then follows every guideline and every standard he can find. After becoming knowledgeable with agency policy, he then waits for either the public to call on him or for things to occur. He often responds very well within the framework of guidelines, standards, criteria, and policy. Gradually, his responses are as predictable as the agency handbook and he becomes increasingly proficient during his career of responding to problems and situations that are brought to his attention. This man had a place in recreation resource management prior to the 1960's. The public's interest in recreation was predictable and he served a function. I don't believe we have a place for him today in recreation resource management, outside of the supply room. We certainly don't have a place for the administrators who perpetuate such personnel.*

This need for enlightened initiative on the part of managers has to be one of the most serious concerns for the administration of the entire system of the nation's recreation resources. I believe that agencies should be held responsible to assure that creativity and initiative will become an integral part of the bundle of competencies we expect from resource managers.

The second point of the paper includes ways that the managers could more effectively manage the less than fee acquisitions. The authors recommend examples of enlightened initiative by calling for resource managers to develop relationships with local leaders and agencies to assist in monitoring the use of less than fee lands. Some of the alternatives they outline provide opportunities, if carried far enough, in certain areas, to share responsibility in monitoring these areas.

I particularly find attractive the possibility of having county or regional planning authorities take responsibility for providing a continuous advisory service to land owners, original and succeeding, covering the provisions of the agreement on part of both owner and agency. It seems to me that there are multiple benefits to this kind of arrangement.

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*From "A Commentary on Recreation Resource Management," by the author, and presented at Clemson University, South Carolina, October, 1975.

1) It can be assumed that local officials and agencies are better situated to communicate with land owners if for no other reason than that they are local;
2) This represents an opportunity for the federal manager to establish a good neighbor program with the local "neighbors" which is not a condescending one-shot effort, but instead is based on a flow of continual and mutual benefits.

I do not agree with the example the authors used to make a point about how agencies can assist managers in managing the less than fee areas. It was suggested through the analogy of the federal inter-agency fire protection units that are on call to combat forest fires. The point being that managers need back-up in addressing the alternatives to fee acquisition.

My reservation to this model is that it continues to limit the responsibility of the manager by placing responsibility for another managerial function in a centralized staff. It seems to me that if the land manager cannot become expert in managing less than fee lands, as he has the traditional fee purchase, he is less a manager than is needed.

Where conflict exists between the agency and land owners, much of the problem is emotional. Origins of these kinds of disagreement are often found in the inability of federal land buyers and planners to establish an understanding/rapport with reluctant sellers. Their often righteous manner in acting on behalf of the public has been known to trigger an owners reaction to change from reluctant to refusal. Long after land purchasers and planners have returned to their regions, the land manager remains preoccupied with picking up the pieces of shattered local relationships with individuals, units of government, officials, civic clubs and groups, and the full range of politicians.

I would therefore suggest another alternative, not in purchase, but in procedure. With the understanding that the process of purchasing or taking of private land for public purpose is often a traumatic experience for the individual and highly disruptive, at least originally, to the communities, the agencies should consider going into the communities for its planning and purchasing expertise instead of automatically using a team of regional experts who visit the area periodically and leave the community without a day-to-day contact. The manager is usually taken out of this chain of responsibility, purposely or not, when he refers questions from land owners to the land purchasers or planners who are seldom located on the property, or if so, are not responsible to him. Site plans, however, should be by park planners.

It would seem that by giving local experts more responsibility for some of the most sensitive and emotional-laden projects involved in land purchase, the agency will defuse many of the problems that arise between agency and community.

The authors made a strong case for intergovernmental cooperation. Several successful cases of such cooperation have recently surfaced in Michigan and I believe worthy of mention.

Due to severe reductions in state appropriations for the operation of the 100 state forest campgrounds, they were scheduled to close during the 1982 summer camping season. But due to an innovative program of cooperation between the faculty in the Park and Recreation Resources Department of Michigan State University and personnel in the Michigan Division of Forestry, only 20 of the smallest will close. The new program is based on student interns augmenting existing staff and thereby providing mutual benefits; agency continues to operate its forest campgrounds and continues to serve the public; students receive a scholarship and experience, and faculty will use students to implement a research program. The agency will also benefit from the results of the research project.

Another example of cooperation between governmental units in Michigan includes the relationships that have been developed between the state and federal forestry agencies in the management of the 7 million acres of forest land in the state. These lands are almost equally divided into state and federal jurisdictions and must reflect the goals of each. The state forest agency, with a State Forest Assessment Plan for guidance, is able to adjust its own goals, and ask the same of the U. S. Forest Service, in order to achieve mutually beneficial goals in managing this resource which is critically important to the future of the State of Michigan.

Educational and technical assistance to land owners was recognized in the paper as a service that agencies could provide in developing good relationships. This kind of outreach to the community is the stuff that sets the cement of good neighbor relations. It should, however, be recognized that advice on "sound timber management, protection of water quality, the manipulation of vegetation to enhance wildlife habitat, the design and siting of building to protect scenic features, or the development of recreation facilities," is available in most states now through specialists in the state universities through the Cooperative Extension Service or state departments of natural resources. Since these services are available, but seldom used by the land manager, the use of this localized resource is not advocated as a new imaginative alternative ...it merely reinforces a point made by the authors that land managers often do not use the resources already available to them.

I will close with an issue that was not included in the paper; education, training and research. It is obvious that the public today is expecting more from its land managers, and rightly so. It is not reasonable however for the legislators and the agencies to simply pass down this concern by advising the manager that they will be so evaluated in the future.

We have no right to expect many of these changes without providing managers with the assistance required to make them more productive. The short range answer is to give the manager access to regional expertise. While this may, in fact, be necessary, the future of these resources will be determined by how well equipped the new manager is to identify and address issues.

We obviously can no longer select future managers from bright seasonals who are kept on the payroll until a permanent position is available. We often reward persistence more than those qualifications that we should expect in a future manager. Similarly, the value that a background in biology achieved in the selection of resource managers has largely outlived its usefulness. Today, it is generally recognized that in some areas the manager is expected to be more responsive to the problems of managing users. Recreation resource managers should be required to have an education background in both the social and natural sciences within a framework of professional application in recreation resource management. A loose configuration of university courses from enthusiastic but inexperienced faculty in the basic disciplines, without a systematic concern for professional application, is no longer as useful as perceived by many faculty and agency representatives during the 1970's. The lack of professional application of university curricula creates a serious gap in bringing young and potential managers to the fast track of today's recreation resource management.

Research sponsored by the agencies that quickly translates to better management is now recognized as an important need by all agencies. While the grizzly bear syndrome no longer dominates recreation resource research, the disparity between the research programs of the various federal agencies borders on the scandalous.

There are two instances of need that I believe translate into additional legislation: 1) Require an effective research program of all resource managing agencies and a device that will assure that the results will be transmitted freely to benefit all agencies; 2) There is a growing interest throughout the country in establishing another ORRRC program. The need becomes more apparent each month as we seek additional information on how to approach and resolve the problems in maintaining the nation's recreation resources in this and the next decade.

Thank you, Mr. Chairman.

Mr. **Reilly**. Thank you. Dr. Jon Kusler, Jon Kusler Associates.

STATEMENT OF DR. JON KUSLER, JON KUSLER ASSOCIATES

Dr. **Kusler**. Thank you. I think that in terms of thinking about proper administration of these innovative techniques, one has to set up the mechanism right when you begin conceptualizing where you are going to apply the technique. There has also been a lot of talk about the local and even the private role, and I think maybe the most productive task that the administration and the staff in Interior could carry out would be to implement some of the directions that they are proposing, especially to look seriously at the role of the private sector.

I was on Cape Cod about 6 weeks ago. I was talking to the chief planner out there, and I asked him whether he thought the Cape Cod National Recreation Area was working. He said in essence that the National Seashore had made available a lot of land and did serve some objectives, but the unique Cape Cod architecture, the fishing village, was rapidly being lost. He pinpointed the problem that we are really not trying to simply buy up a chunk of land in many areas, and if we do, the vitality of the area cannot be maintained.

You need innovative techniques if you are going to have a living landscape. During the last 10 years we have just begun to figure out how to actually carry out what Congress has said that it wanted to do for places like Santa Monica, Jean LaFitte, and the Fire Island. We are dealing with living landscapes to some extent in these areas. That means that the private property owners and the local governments have to be involved. The criticism that has been levied against the Federal Government to some extent and certainly to governments for making private property/owners invisible people I think is valid. I am coming from the side of resource protection and I am still saying this because I don't think we have had any policy for private landowners. We have been dealing with them as if they don't exist. The Park Service have generally hoped that inholdings would go away, and the only other way of dealing with them is to acquire them.

How does that problem relate to the administrative challenge? I think if we are going to have new efforts to protect lands adjacent to parks by creating buffers, and if we are going to have additional green line areas, we have to start out with looking at where the needs are and who the actors are. Those actors include local governments and States, and the private landowners. If you take that into account and start building your innovative technique or innovative approach from the bottom up, I think that there is a real possibility of coming up with some interesting approaches that do balance out interests. These approaches, applied at Cape Cod could protect to some extent the architecture of the fishing villages.

I think that what Bill Shands' ideas are helpful. I think that I would add a caveat in each one of them about how can we input the private landowner and the property owner at each step even more fully. For example, I find there is a terrific need for highly specific resource data if you are going to craft techniques to a particular situation. It is not good enough to have generalized maps of flooding and scenic areas and so forth. You need maps on a mangement scale, a data management scale. It also turns out that you can actually often involve the individuals in the area in gathering some of this information very cost effectively, and it need not all be a Federal effort. By involving them in data gathering at the beginning, you get them aware of what may happen later on. You get them involved in the standard setting.

I believe that in terms of the question of incentives, there has been a lot of talk about less than fee. I think that using fee while very appropriate, should be used highly selectively, and I don't think there has been enough talk about the criteria for using it. Specifically I have found local goverments buying some property from a landowner if the landowner is unhappy. That may seem like a radical idea. But if you have regulations on a community and most of the landowners are happy but one is not, I think that is a creative use of fee acquisition to acquire that property. The others are satisfied and they don't complain if land is acquired. I think there is some specific criteria that could be used to determine when acquisition is appropriate, that can be implemented on an individual basis.

I think that we also need to think about neutral forums. When I look at proposals to protect our National Parks, I wonder if we are not being very unfair to the National Park Service. I find the National Park Service a very idealistic and a very competent organization for its primary mission. But if you try to get the National Park Service to be judge as well as advocate, it really has a very difficult time. I have been with park managers talking about trying to inventory and plan the land adjacent to a park. They say we are here to protect and yet we are also supposed to be in the future out there negotiating and being the mediator. I think that we have to look to a neutral mechanism that can permit both advocacy and mediation. Maybe it is a State or local government or maybe it is another agency.

If we can't get some of these major areas protected, if the Park Service can't do it, maybe we should think about the Forest Service that has more of a traditional role of balancing off of interests or maybe even the Soil Conservation Service. I know this is an econoclasm. But I think that our solutions have to be politically realistic, and when you try to get people to line up in an unrealistic way in terms of their primary mandate, it often results in their discomfort so they can't carry out their job.

As a final point I would like to say I am relatively optimistic because there are some very interesting models for mediation between specific groups around a park. Many of the park managers don't want additional campgrounds and related activities within the park, yet they recognize there is a need to accommodate the needs of people who are coming to the park. On the other hand, the local community says if we put in a campground and a restaurant and that will increase our tax base. If you can work with those pressures, I think you can be effective.

Mr. REILLY. Thank you, Jon. Mr. Bernie Schaefer, assistant chief, Division of Realty of the Fish and Wildlife Service.

STATEMENT OF BERNARD J. SCHAEFER, ASSISTANT CHIEF, DIVISION OF REALTY, FISH AND WILDLIFE SERVICE

Mr. SCHAEFER. I have furnished a statement for the record on Mr. Shands' paper. I will highlight my comments and add a few additional ones.

Being the only agency representative here, it is my role to advise you of some of the experiences we have had in administering an active easement program. We very much agree with the Conservation Foundation's views about the importance for close monitoring and firm enforcement as essential ingredients to a successful less-than-fee approach to land protection. I suspect that the commitment required is not always fully appreciated as we have lived to find out.

I might say here that we do have approaches other than easement including less-than-fee technique programs, cooperative agreements, MOU's, and secondary use of land. Most of these are on public property so it doesn't involve the same sort of relationship as is required with administration of easements on private land.

We began taking waterfowl production area easements about 1960, and since then have acquired roughly 20,000 of them. These easements almost all involve a perpetual one-time payment but they are binding on all subsequent owners. They protect small duck breeding marshes, mostly in the Dakotas and and Minnesota, from draining, burning, and filling. The owners are otherwise free to farm or graze the wetland as the moisture conditions permit. Almost 1¼-million wetland acres are under protection, and the program is still active. Fee lands have occassionally been acquired in this program, but the main approach has been on easements because of cost, the scattered distribution of wetlands, and the desire to keep the land in production and on the tax roll. I should say that these are all negative easements, meaning that we have no active management by the Fish and Wildlife Service, but rather our administration has to do mainly with monitoring and enforcement.

Most of these easements are complied with voluntarily, but every one of them is a distinct arrangement with a private landowner, and thereby holds the seeds for violation. To be sure that there is adherence, we have developed an extensive monitoring and enforcement system. Though it is a costly, long-term commitment, we think it is both indispensable and more than offset by the benefits of the easement approach.

Each year the easements are checked from the air. The suspected violations are noted and reinspected by plane and again on the ground. These owners are contacted by a two-man Fish and Wildlife Service team. The owners are reminded of their obligations and hopefully persuaded to make restoration. Sometimes this requires several contacts. If these efforts are unsuccessful, the matter is turned over to the attorneys. All of this may seem a little heavy on the enforcement side, acknowledging that enforcement must be evenhanded and reasonable if it is going to be successful and not counterproductive. We are far more interested in having the violation corrected than making a case, but we have found that there must be a willingness to enforce compliance if the easements are to stand up. To make them stand up to a potential court case, it is also necessary to have the contact interview and the gathering of evidence all handled correctly from the beginning in each case. The cases that are taken to court must be solid. If you do go there, you don't want to get beaten.

Court action is the last resort. Less than 5 percent of the cases of suspected violations ever go to court. All others are handled peacefully. Voluntary compliance has been good, as I said, owing partly to the monitoring emphasis and partly to willingness of individuals to abide by a contract they understand. Easement administration begins at the time of negotiation when as much potential misunderstanding as possible has to be eliminated. The document itself must be as specific and direct as it can be, subject to a minimum of interpretation, and must be clearly comprehended by the landowner before he signs and gets paid.

After that, we intend to enforce it. Contrary to the suggestions in the paper which seem to advocate some flexibility in the nature of the easement contract, ours have been almost the same. We think that this continuity has helped both in understanding with the landowner and in the enforcement effort. We have only made one major correction, and that had to do with location of the wetlands. What we thought was the simplest approach in doing that had to be altered about halfway through the program. Otherwise it has been basically the same.

Usually the original owners know the terms of the easement well, but understanding diminishes with subsequent owners, and violations are more likely. The actions by tenants or renters who don't know about the easement are a troublesome problem. We therefore, try to keep communications with each owner going by tracking those changes through the courthouse records as much as possible. We send a courtesy letter to the new owner to make sure he is aware of the outstanding easement. In that way, we are somewhat similiar to the Forest Service. We have thought about improving this system of tracking ownership, but it would involve more expense.

If an easement program is necessary to protect the natural resources against adverse imfluences, it is logical to expect conflict over the easement as the forces bringing those changes increase. In our case, agriculture has changed drastically, and economic impact of the easement on the landowner is becoming quite real. The payments made many years ago, sometimes to a foreign owner just don't seem to add up to the advantages and the profit to be made by development of the property.

To sum up here, the compliance and communications work is a costly administrative burden, but one we believe is outweighed by the benefits. Planners and management must take these costs into careful account when considering whether less-than-fee approach is going to be cost effective.

[The prepared statement of Mr. Schaefer follows:]

STATEMENT BY B.J. SCHAEFER, ASSISTANT CHIEF, DIVISION OF REALTY, U.S. FISH AND WILDLIFE SERVICE, TO THE WORKSHOP ON PUBLIC LAND ACQUISITION AND ALTERNATIVES HELD BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER - JUNE 14-15, 1982.

RESPONSE TO: THE ADMINSTRATIVE CHALLENGE OF LAND PROTECTION

We agree with the Conservation Foundation view that one of the keys to an effective less-than-fee techniques approach to land protection is the monitoring and strict enforcement of the terms of the restriction on the property. It is very easy to underestimate or not fully appreciate the importance of this aspect when considering less-than-fee method, particularly a purchase program for easements.

Of similar importance as suggested in the CF paper is the necessity of having the cooperation of the landowner. Voluntary, continued compliance is a far better approach than total reliance on legal enforcement, essential as that is also. Communication with the property owner at the outset and periodically thereafter, to assure he knows exactly the conditions governing his property is a basic part of the desired cooperation.

The U.S. Fish and Wildlife Service has a great deal of experience with less-than-fee acquisition and easement management in its Waterfowl Production Area Program. In addition, the use of easements is becoming more frequent in our major refuge land acquisition and acquisition planning. My comments on the paper therefore, will focus on the use of less-than-fee acquisition and the need for effective administration of the property rights obtained.

The Waterfowl Production Area program is designed to prevent destruction of the myriad of marshes in the prairie pothole region of the upper midwest, principally the two Dakotas and Minnesota and to a lesser extent adjacent

States. Substantial amounts of fee land have been acquired, but the main approach has been through easments because of the scattered nature of the wetlands and the prohibitive cost of fee title. Furthermore, the intent is to affect the normal farming pattern, the tax structure and the economy as little as possible. When the wetlands are dry of natural causes the owners may farm or graze them so long as they do not violate protective provisions in the easement.

Over the past 20 years, the Service has placed over 1 million acres of wetlands under easements that are perpetual, that is, "they run with the land." Subsequent purchasers are bound by their terms not to drain, burn, fill or level wetlands. This means that we have over 20,000 individual relationships with original easement sellers or their successors in title. Each one holds the potential for a violation so an intensive monitoring program through aerial surveillance is conducted annually. The program has been stepped up over the last ten years or so and a very thorough system has evolved for documenting the conditions of the tract at the time the easement is taken as well as following up on supected violations.

In an area of suspected violation a follow up flight is scheduled for a closer inspection. If it still appears there is a violation a ground check is made and the landowner contacted. The contact requires two Fish and Wildlife Service people, one with law enforcement responsibility. The landowner is informed that we believe that the easement has been violated, his obligations under the easement are explained and attempts are made to secure voluntary corrections. We prefer a peaceable solution through several additional contacts if necessary but if this is not successful it is turned over to the attorneys and a suit may be initiated.

Fortunately overall voluntary compliance is good, at least partly attributable to the general knowledge of the surveillance program. Most of the violations are corrected through contact with the owners - for instance in 1981, of 423 suspected violations ground checked by management personnel, 68 were referred to the law enforcement staff. Eleven of these were eventually taken to court, the others chose to do restoration work to correct the infractions. Our success rate in litigation has been nearly 100 percent.

A successful program must have the cooperation of the landowners. To cooperate the landowners must be informed of the easement and the restrictions placed on the use of his land. Usually the original owners from whom the easement was purchased are well aware of the restrictions and in many cases sympathetic to the program. The subsequent owners create a more difficult problem. In a program like the Waterfowl Production Area program, ownership changes are difficult to detect depending on the type of document that is used and the filing system of the County. We do, however, try to keep track of ownership changes from court house records. Although the new owner should be aware of the easement through the title examination, he is sent a courtesy letter to remind him that the easement is still alive. We offer to answer questions he might have about the easement and what is necessary to avoid a violation.

While friendly compliance is the ideal situation, management should realistically expect that at some point conflicts will arise. The conflicts will, for the most part, be generated by the effectiveness of the program in accomplishing the very thing it was designed to do. Times change, owners change, economic pressures change, value systems change and the long term relationship with Government imposed by the easement will cease to be attractive to at least some property owners. The temptation to violate will increase. The easement holder must be prepared to withstand the pressures and be blessed with a carefully drawn easement that can stand up to a court test.

In our case, the agricultural scene has changed greatly since the easement acquisitions began. Advances in farm practices, machinery and pivot irrigation, to name several, compete against provisions of the easement. The amounts paid initially, though correct at the time, look paltry by today's standards and often are a sore spot, and especially to subsequent owners who received none of the payment. We try to accommodate owners as much as possible--for instance, we are studying ways pivot irrigation can be made compatible with the easement--but it usually boils down to a denial since wetland destruction would occur otherwise.

As can readily be seen, the compliance and communication work is a costly administrative burden but one we believe is outweighed by the easement benefits. The point is that planners and managment must take them into careful account when considering whether a less-than-fee approach is going to be cost effective.

To sum up, our Waterfowl Production Area program has shown that less-than-fee acquisition is effective but that, 1) cooperation of the land owner is important; 2) monitoring and enforcement discourages infractions; 3) costs of monitoring on a long term basis must be thoroughly considered when developing the program; 4) conflicts will arise and must be taken into account at the outset.

Mr. REILLY. Thank you. Mr. Richard Curry, Richard Curry Associates.

STATEMENT OF RICHARD C. CURRY, RICHARD CURRY ASSOCIATES

Mr. CURRY. Thank you, Bill. Shands and Duerksen accurately note that less-than-fee alternatives for resource protection require a very intense and highly technical management capability. The also note that current staffing and dollar resources are insufficient to perform that oversight function and certain levels of expertise is not available to the land managing agency.

I agree with these concerns but I would hasten to add that the causes of our current dilemma are much more deep-seeded. Merely throwing more staffing and dollar resources at the problem could prove to be marginally effective at best. I suggest to consider the following concepts in shaping our solutions.

First, we should better utilize the mechanisms of the marketplace with its system of pricing, incentives, and disincentives as a means of developing and maintaining less-than-fee arrangements.

Second, we should identify the interests and objectives of the various parties to be affected by a specific policy, program, or action to afford each one the opportunity to assume an appropriate role in decisionmaking and the implementation process.

Third, we should approach the task of public management with the same degree of flexibility that we make available to the private manager. I think emphasis of that point was one of the real values of the privatization discussion the other day. We were dealing on a much higher plane with issues that we probably will not be wrestling with in this group. But, it seems to me that one of the important elements of that discussion was that it pointed out that some of our failures in this area are institutional in nature and not strictly attributable to the role or capabilities of the manager.

With these general themes in mind, let us attempt to describe some more specific applications. What I meant in the first instance is that we need to recognize that in developing a set of less-than-fee tools, we must rely on the forces of the marketplace. In order to do this, each policy objective must be identified and quantified in economic terms. What is the value of an unobstructed vista, of a vegetation buffer, a working landscape, a captured moment in time, of an architectural or cultural fabric?

For those who say you cannot put a price on the sunset or these kinds of values, I would submit that the real estate market performs this feat on a regular basis. A determination should be made as to which uses or values are to be maintained, and the market should determine the cost of value of this at the outset. A contract then should be developed that provides a means of fully compensating the private owner for maintaining the desired values for which the public's use or enjoyment is sought. The contract should also provide compensation to the public for any subsequent destruction of these values by the private owner.

In the past, we have not made a real effort to assess the real value of the public use we are seeking to establish or protect. Consequently, the private owner has had little incentive to preserve, and the consequences for destroying that public value have been minimal. For example, we have only appraised a stand of timber in terms of its market value of the lost board feet and not relied on a real estate market approach. The real estate market recognizes that there is a standing esthetic value to timber, so when the owner cuts the stand, it only pays back the market price for the trees as logs and not the esthetic value of having the perpetual growth or enjoyment and other biological factors.

In short, the owner should be compensated for the intrinsic value that is to be preserved and should also have to repay an extraordinary amount for damaging the resource. Specific payment to the owner may take the form of a combination of cash plus a continuous tax relief or adjustment for maintaining the resource. The subsidy should provide a real incentive to continue to provide protection.

On the other hand, forfeiture should be direct only. Tax penalties or the equivalent of a mechanic's lien on the property may provide sufficient inducement to remain a faithful party to the agreement. This type of arrangement would also provide Federal administrative advantages.

The agreement could be self-monitoring on an annual basis if the owner is required to certify that the eligibility standards for continued tax benefits have been followed. When property changes hands, the buyer must be knowledgeable of the restrictions that have been placed and what his obligations are, and agree to the terms. When mutually agreed upon deviations or variances occur in the basic contract, these must be properly reported and the public manager held directly accountable for assuring that any alteration is compatible with the perpetuation of other sources.

By establishing a price tag that most closely resembles the public value to be protected, a greater incentive for the private owner to accept the responsibilty for maintaining public value will be provided. By focusing the contractual nature of the agreement on the economic terms, the courts and the IRS can administer the test of compliance.

As Shands and Duerksen also point out, the successful less-than-fee strategies involve several layers and entities of government. The Congress addressed this issue in legislation establishing the Cape Cod National Seashore. I think if you take a look at Cape Cod from the seashore boundary out as opposed to the Cape Cod uptake from the seashore boundary, I think you will find that the Cape Cod plan did a remarkable job of preserving the small towns and villages. The encroachments, the second homes and destruction of the north shore community are really occurring outside of the boundary of the seashore, but in seeking to provide public recreation space and preserve that quaint style, Congress provided for a conditional suspension of eminent domain with the same formula as was also applied to the Fire Island National Seashore and elsewhere in the system.

The mechanism for securing public values and preserving private ownership rights was in essence an intergovernmental compact. Each partner, Federal and local, was recognized as preeminent in their own sphere. The Federal Government was responsible for developing principles and guidelines to assure the perpetuation of those public values for which the area was established——

Mr. REILLY. Would you close?

Mr. CURRY. OK. The local governments were responsible for providing, using their police power authority, specific regulations to pursue and be supportive of the Federal guidelines.

One of the specific recommendations that we may discuss later is the idea of turnaround legislation where the land managing agency would have the authority to purchase those owners that are violating local zoning or the principles and guidelines to acquire real estate, and then turn around and sell it back to a compliant purchaser. That keeps the property on the tax roll. But it also requires retention of funds for the local manager.

One other quick question is whether the land in the Santa Monica Mountains National Recreation Area belongs in the national estate or not. I think if you carefully look at that legislation, you will see that there are opportunities, based on the legislation, to do a great deal in terms of alternatives to full fee acquisition. But under our present arrangement we don't treat the public manager as an entrepreneur and we shackle his ability to roll over a piece of property. I think this was brought out earlier in the day—to perhaps buy in fee, then put it back on the market as a planned unit development or having some kind of deed restriction. Under the present system, we just can't roll over the same piece of property, and that is the way you recapture the economic value that you have created as a public project in the first place.

I will stop there.

[The prepared statement of Mr. Curry follows:]

RICHARD CURRY ASSOCIATES

Remarks of Richard C. Curry
Panel on Innovative Land Protection and Management
Senate Public Lands Workshop
June 15, 1982

Shands and Duerksen accurately note that less-than-fee alternatives for resource protection require a very intense and highly technical management capability. They note that current staffing and dollar resources are insufficient to perform the oversight function and certain levels of expertise are simply not available.

I agree, but hasten to add, that the causes of our current dilemma are more deep-seated and that throwing more staffing and dollar resources at the problem will prove to be marginally effective, at best.

I would suggest that, among other things, we consider the following concepts in shaping our solutions:

1. We utilize the mechanisms of the marketplace with its system of pricing, incentives, and disincentives as a means of developing and maintaining less-than-fee arrangements.
2. We identify the interests and objectives of the various parties to be affected by a specific policy, program or action and afford each one the opportunity to assume an appropriate role in the decision-making and implementation process.

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3. We approach the task of public management with the same degree of flexibility that we make available to private management.

With these general themes in mind, let us attempt to describe more specific applications.

We need to recognize that in developing a set of less-than-fee tools we must rely on the forces of the marketplace. In order to do this, each policy objective must be identified and quantified in economic terms.

What is the value of an unobstructed vista, a vegetation buffer, a working landscape, a captured moment in time of an architectural/cultural fabric?

To those who say you cannot put a price on the sunset, I would submit that the real estate market performs this feat regularly. A determination should be made as to which uses or values are to be maintained. The market should determine the cost of this public use or value at the outset.

A contract should be developed that provides a means of fully compensating the private owner for maintaining the desired value(s) for which the public's use/enjoyment is sought. The contract should also provide compensation to the public for any subsequent destruction of these value(s) by the private owner.

In the past, we have made little effort to assess the real value of the public use we are seeking to establish. Consequently, the private owner had little incentive to preserve and, as a result, paid only a minor price for violation of the agreement. For example, we have only appraised the value of a stand of timber in terms of the log market and not relied on the real estate market. The latter market recognizes that there is a standing/aesthetic value to timber. As a result, when the owner cuts the stand, he only pays back the market price for the trees as logs and not the aesthetic value of a perpetual grove.

In short, the owner should be compensated for the intrinsic value that is to be preserved and should also have to repay an extraordinary amount for damaging the resource.

Specifically, payment to the owner may take the form of the combination of a cash offer plus a continuous tax adjustment for maintaining the resource. The subsidy should provide a real incentive to provide protection.

On the other hand, the forfeiture should be Draconian. Tax penalties and/or the equivalent of a mechanics lien on the property may provide sufficient inducement to remain a faithful party to the agreement.

This type of an arrangement would also provide several adminstrative advantages.

1. The agreement could be self-monitoring on an annual basis if the owner is required to certify that the eligibility standards for continued tax benefits have been followed.

2. When property changes hands, the buyer must be knowledgeable about the restrictions and agree to the terms.
3. When mutually agreed upon deviations/variances occur, they must be properly recorded and the public manager held directly accountable for assuring that any alteration is compatible with the perpetuation of the public resource(s).

By establishing a price tag that more closely resembles the public value to be protected, a greater incentive for the private owner to accept the responsibility for maintaining the "public value" will be provided. By focusing the contractual nature of the agreement on economic terms, the Courts and the IRS can administer the test of compliance.

As Shands and Duerksen point out, successful less-than-fee strategies involve several layers and entities of government. The Congress addressed this issue in the legislation establishing the Cape Cod National Seashore.

In seeking to provide public recreation space and preserve the quaint style of the Cape's towns and villages, Congress provided for a conditional suspension of eminent domain. This same formula was also employed at Fire Island National Seashore.

The mechanism for securing public values and preserving private ownership rights was, in essence, an intergovernmental compact. Each partner, Federal and local, was recognized as preeminent in their own sphere. The Federal government was responsible for developing principles/guidelines to assure the perpetuation of those public values for which the area was established. The local governments were responsible for adopting specific local regulations which were supportive of national objectives as set forth in the Federal guidelines. Once in place, neither party could unilaterally abrogate the agreement.

In order to enforce this agreement, a specific tool is recommended -- Turnaround Legislation. This tool would authorize a process whereby property that has been purchased from non-conforming owners will be resold with appropriate restrictions to a buyer who will use the land in conformance with the approved zoning regulations.

What is essential is that the proceeds from the sale be retained in the local unit to permit future purchases of non-conforming uses.

Retention of funds provides the incentive for the local manager to use less-than-fee alternatives and the presence of a viable enforcement mechanism should deter prospective violators.

The Assembly Technique of New Area Acquisitions.

Congress has authorized several new areas to the National Park System which have only been nominally acquired at this point. In these instances, as funding becomes available, careful consideration ought to be given to the concept of acquiring fee and less-than-fee interests through a series of multiple transactions similar to the activities of a large real estate broker.

By using the techniques of the marketplace, the cost of each project can be substantially reduced by recapturing in a series of transactions the values that are being created as a result of the public project.

For example, the external boundary of the Santa Monica National Recreation Area lends itself beautifully to such an approach.

The external boundary is by no means to be considered contiguous to the "fee zone." Rather it defines a planning unit. Through a series of transactions including purchase/sellbacks, purchase/leasebacks, fee, planned unit developments, etc., the National Park Service could acquire the value protection and the fee lands required for a viable area well within the Congressional authorization. The traditional pattern of simple transactions of buying fee or buying easements will not meet this standard because that approach does not permit the recapture of any publicly created values. The purchase and development of the Chicago lakefront parks and the Toronto subway right-of-way acquisition programs are examples of the type of brokering that must occur to recapture publicly created values and provide a cost effective means of meeting land use objectives.

In conclusion, I would hope that we would reinvest the proceeds from the sale of public lands to establish a capital development fund for improving the management of the public estate. We cannot, in my judgment, develop good stewardship of the public lands if we continue to withhold from the public manager an even flow of investment capital.

The establishment of the Land and Water Conservation Fund recognized the necessity of reinvesting the proceeds from the sale of one public asset into the management and acquisition of other public assets. We need to take the next step and assure that expenditures from the capital fund are not subject to the fits and starts of our normal appropriation process. Unless we are willing to take these steps, our commitment to stewardship is hollow, indeed.

INTRODUCTION

The Fire Island National Seashore was established in 1964 to preserve and protect one of the last relatively unspoiled natural barrier islands in the Northeast for the use and enjoyment of future generations.

Fire Island is a unique resource. It is located only 50 miles from New York City and has one of the finest ocean beaches in the world. It also has magnificent dunes and spectacular maritime forests including the famous Sunken Forest Preserve. Although there are bridges at either end of Fire Island, there are no roads to mar the beauties of the island: access to most of the seashore is by ferry and footpath.

Within the boundaries of the seashore are 18 scattered small heavily developed communities, primarily consisting of single-family homes and cottages and the businesses serving them and day visitors. There are about 4,500 such structures today compared with fewer than 3,000 when the Seashore was established. Future growth is estimated at about 1,000 additional structures.

The Act exempts private property within these communities from condemnation, with some exceptions, provided that the local authorities have in effect zoning ordinances which conform to standards promulgated by the Secretary and which are approved by the Secretary. [No current local zoning ordinances have been approved by the Secretary, although three of the four zoning authorities have made the necessary amendments and the fourth is expected to do so this year.] No new commercial use or expansion of existing ones is permitted without the approval of the Secretary. Property subject to a variance or non-conforming use loses this exemption. Since the subdivision in many communities originally was intended for modest cottages, under present zoning laws many plots are buildable only under a variance. More than one-third of the structures built since 1964 received a legal variance under New York law.

P.L. 95-625 created an oceanfront Dune District to prevent any further development on the protective dune system. Owners of undeveloped property within the Dune District are permitted to retain title provided the dune is kept in its natural state.

The first zoning standards were promulgated by the Secretary in 1967; the latest revision was in September 1980. The standards contemplated low density of use to protect the environment, mostly single family homes, and limitation of commercial uses to those serving the needs of the communities. The idea was to keep private development within bounds appropriate for a national park. Unfortunately this scheme has not been entirely successful. The high demands for vacation rentals on this most desirable island has led to the sometimes illegal conversion of single family homes into multiple dwellings or rooming houses. Bars, discos and hotels have been established in violation of zoning standards.

Enforcement of standards by and large has been a failure because Congress authorized condemnation as the only enforcement tool. The Secretary has no authority to obtain an injunction in federal court. We twice have raised the authorized ceiling for land acquisitions, but annual appropriations have not been adequate. Furthermore, in these times of fiscal constraints, the National Park Service puts a low priority on using scarce land acquisition funds for enforcement. A federal court has criticized this scheme as follows:

> "In their justifiable frustration plaintiffs have sought relief from the courts but it is clear that only Congress can provide the remedy . . . nevertheless, precatory though our words must necessarily be, we cannot help but urge those with the power and authority to preserve this gem of an island to halt their procrastination and get on with the urgent business of saving this charming and fragile outpost of nature before the encroachment of haphazarddevelopment irrevocably despoil it." (Biderman vs. Morton, 497 F.2d at page 1148-49).

This bill offers a way out of the dilemma. It is one which will cost the taxpayer little or nothing. It is one which avoids retiring from private use expensive property with little or no public value. It also is more flexible and respectful of private property owners.

It is important to emphasize that the broad powers the Secretary now has and the additional powers this bill would grant are intended to be used only in instances when the municipalities are unable or unwilling to enforce the zoning standards. The principle of home rule in this area is primary. The Secretary's powers are a "court of last resort."

It is intended that the Secretary shall use the powers given to him only in cases of gross violations which degrade the character of the communities or which threaten the natural resources which the Seashore was established to protect. The Seashore now has a land acquisition plan that takes into account these fine distinctions. Congress cannot take on the burden of enforcing the Secretary's zoning regulations or making judgments on individual instances. But we can provide a better and more cost-efficient mechanism than now exists.

This bill does two things: It allows the Secretary to sell acquired property with a covenant for a conforming use and to retain the proceeds for future enforcement action. It also gives the Secretary the option of applying to the U. S. District Court for an injunction against the non-conforming use pending the condemnation. These are not "new" powers. What is new is the way in which they are being applied.

The "turn-around" provision, acquiring a non-conforming property and selling it for a conforming use, has been in the Lands and Waters Conservation Act. It hasn't been used in the Seashore because the proceeds from such sales do not go back in the Seashore but into the general fund. This bill would establish a "revolving fund" to put proceed of the sales right back into the Seashore only for the purposes of implementing the Act.

One reason the deterrent has not been effective is that the safeguards Congress has built into land acquisition procedures to protect the interests of private property owners have a built-in time delay. Where development pressures are as great as they are at Fire Island, these put the property owner who is determined to violate the standards in a "no risk" situation and the government in a "no win" situation, which guarantees a loss to the taxpayers.

Testimony before the House Appropriations Subcommittee on Interior and Related Agencies, March 17, 1980, documented a number of recent instances in which building in violation of standards was carried on even after the Secretary had initiated use of his condemnation powers. Before the required proceedings had been completed, the government was faced with paying fair market value for a developed or partially-developed tract instead of for vacant land. The National Park Service then either backed away from the whole situation or expended hundreds of thousands of dollars needlessly.

The provision to permit the Secretary to apply for an injunction will give him the ability to act swiftly to prevent such exploitation. It does not confiscate property rights because at the end of this procedure one of two things happens: either the property owner is paid fair market value for his property, or he decides to use it in conformity with the zoning standards. If the property is acquired, this bill provides for the "turn-around" and the ability to use appropriated funds similarly for future potential violations.

This is not exactly a "free lunch" proposal. There will be some costs. But it does protect both the public interest in preserving the island and the public treasury. It also is more equitable for private property owners than what we now have and will allay the concerns some Fire Islanders have expressed in the past about the Seashore's acquisition and condemnation policies.

Mr. Reilly. Thank you, Dick. Do you have any questions?

Mr. Noonan. I have a comment and a question for Bill. It seems to me as we think about these less than fee techniques and incentives, and sweeteners as you called them to make them effective, I am reminded of a comment by, I believe, Mr. McCone from the Treasury Department last year. He cautioned us to consider whether these sweeteners and incentives should apply to the entire landscape or to certain areas that meet certain criteria such as national park refuges, or areas of national significance. He went on to say if we could design something that was similar to the national historic program with the incentives from being on the registry, an accelerated writeoff provision, et cetera, that you then gave them something to have a handle on in terms of their process for review and evaluation.

I wonder if you had given any thought to that which might help us move this concept forward? One of the first things would be to identify those types of areas that would qualify for these types of increased incentives, be they less than fee or direct tax incentives or what have you. Do you have any thoughts on that, Bill?

Mr. Shands. Pat, I have only some beginning ones. I think it is very clear that there have to be some criteria rather carefully drawn whether you use them nationally or in microscale within the Santa Monica Mountains or other places where these incentives and special programs are appropriate. At this point, this is something that needs a lot more thought and research. Congress should establish what is the national interest in these areas, and that as we move into these new approaches, it is going to be pretty much up to the Congress to decide how important each area is that we are talking about, its area, and what we are willing to give up or what the public is willing to give up in terms of costs to establish that.

Mr. Noonan. But you do see some logic to the idea of applying these in areas which meet certain criteria rather than across the board?

Mr. Shands. Yes. I have no problem with that. That seems to be absolutely essential. Let's say on the national level, the Congress is going to have to establish areas where these approaches are particularly effective and write those into legislation.

I am particularly struck by Jon's comments and suggestion that these have to be built in right at the time that the unit is planned. We cannot say we are going to use all these things and then say OK, go ahead and do it. I think these have to be done rather carefully.

Mr. Noonan. I can assure you if you set up a new national park and provide in there full tax credit with limited carry forward, you would have rates flowing in very quickly. Thank you.

Mr. Reilly. I don't know how Mr. McCone would feel about them. George, do you have any questions?

Mr. Siehl. Not at this time.

Mr. Reilly. It seems to me that less than fee approaches have always suffered from an aura of suboptimization. They are somehow less than ideal, and we come to them with reservations for that reason. You have very nicely set out a set of detailed problems, questions, considerations, and taken us a step further into specifics.

How would you envision going yet another step to get the answers to those questions that you set out, being more generous than necessary, and at what point does the cost of incentives become so great as to cast doubt on the desirability of using less than fee? You have got about a dozen of those questions. I was wondering with respect to the case studies, for example, we had this morning, is that where these questions should be asked? Would you advocate legislation on a trial basis to get answers to these questions or do you think that you would support gong further and supporting some kind of authorizing legislation to prevent more widescale use?

Mr. SHANDS. Well, first of all, I would develop some pilot projects if we are going to have some real tests of supplements to fee purchase. I think we need some pilot projects of a new generation that we could—carefully crafted perhaps better than you can by looking ex post facto at what we have now and trying it, assess what those are. You might be able to set them up in a way that you could answer the questions more easily.

Bill, I tend to believe that what is needed is some good economic research. People can go out and look at all the costs and all the returns. I tend to think that in trying to do cost/benefit analysis, we are really only looking at a very thin sliver. We talked about the best example in terms of the management costs versus the public benefits. We even have data incorporating all the direct management costs in these various things. We are only probably accounting for a fraction of those, and I think my suggestions would be just to start developing some economic methodology. Many of these people may have the answer to that one.

Mr. CURRY. Let me take a totally different tack. I think that one of the reasons why less than fee has been shunted aside for so long is that we have talked about it in economic terms rather than taking our first order of priority in defining what it is we want to accomplish, what we want to protect, and then select that vehicle which is the most effective.

The only time in my judgment that cost ought to come in is when everything else is equal. Let's even get a less than fee proposal A, and less than fee proposal B, then maybe go to cost effectiveness. We are just chasing our tails around, and we have been for decades on this issue, by focusing on the economic issues because as Jon pointed out, when you begin to focus on the economic questions, then you ignore the cultural, the social and all these other impacts, and then you foreclose the opportunities to be truly creative in each situation.

Another beef is this issue of national significance. It is not a copout when we say Congress or the State legislature or the council should determine what is significant. That is their job, and that is their policy. They decide that we are going to commit something of the public purse either in dollars or manpower or subsidies to a project. That then becomes nationally significant. We are not going to be creating a lot of new parkland or new forests or anything like that, certainly not this administration or any other administration, but the whole job of resource and value protection, cultural and biological, is much broader than the Federal role.

The Federal role—and we confuse Federal role with ownership and management—the Federal role can be strictly stimulation through subsidies, and very arm's-length kind of involvement in conservation issues.

Mr. **Reilly**. Lou and Jon?

Dr. **Twardzik**. Bill, it seems that in most discussions in the past about ways of getting greater public access to natural resources at lower cost we invariably talk about the experiences of the English, the international park system, and the Germans. You didn't even mention anything along these lines, and I am wondering is there really something that we can learn from other cultures and other societies in the way they made their resources available to the people?

Mr. **Shands**. I think I would have to refer to Jon Kusler on that. That is a good question. I would just say I am not an expert in the English land system, and Jon has done a good deal of work on it. I guess I take a rather simplistic approach to that.

While I have admired what I have read on what the English are doing, we have got to shape our own institutions and meet our own needs, and to what degree that is transferable I personally have some doubts, but that is a good question. It certainly is important for research also.

Mr. **Curry**. The English experience is particularly interesting in terms of the mechanisms they have worked out. I am not sure they were totally applicable in terms of our ethics and so forth, but they have worked on, for example, this concept of letting all the groups that would have an advocacy position use that position in working out mediation techniques for trying to get those positions addressed and resolved. Some of those concepts are pretty interesting. They have had 30 years of experience, but I would like to second the comment here that I am not sure that the cost/benefit look is going to be very effective. It may be important in terms of Congress, but I think we need to go back to what we are trying to do.

The other point I would like to make is that this set of hearings or workshops are a very good start because we do have about 20 areas, or 30 areas, depending, that have had experience, in the case of Cape Cod almost 20 years. Managers of these areas are kind of reverse experts, and even in those two workshops they haven't really gotten into some of what has been learned in terms of trying to plan the interests of public and private land and how you really get the public involved. I think there is a great deal that people can tell us like John from the Adirondacks. He has been struggling for years—so have the Hackensack people, and I think some of that will be very interesting to this workshop or similar groups. I hope that there can be continued forums for exploring some of what we have already learned, and we have, by the way, learned a great deal, in my opinion.

By the way, I agree that we have done a pretty good job on Cape Cod. But that is a good example of a park that was established for a special protection area with a new concept in mind, and the Park Service has essentially applied a total acquisition policy to Cape Cod. In other words, the intent was to keep the private land within the boundaries, and the Park Service has little by little been acquiring all that land or trying to. I mean—I want to be careful what I say here—it is a good example of trying to apply an old approach to a new concept. I think there are much better areas that can be looked at in terms of truly innovative ways to work out public-private sector roles.

Mr. **Reilly**. Let's go to the floor for the brief time we have remaining. Questions or comments for the panelists or respondents?

Mr. **Irland**. Lloyd Irland from Maine—a big concern in all the discussion about the advantage and disadvantage of less than fee and so on seems based on my experience on Fire Island at the State level is simply the administrative capability of the agency and the political reality that the people don't like Government land acquisition. The big attraction of less than fee approaches is it allows us to design resource use programs that can allow certain activity to continue in existence and thereby achieve the objective of acquiring only what you have to have. We have done a certain amount of that up in New England and found the concept is also a lot easier to sell and works easier, and it is also a lot less likely to run into political attitudes.

In New England we don't have a supportive public attitude toward land acquisition, and you achieve a lot of other objectives that I haven't heard emphasized very much.

Mr. **Schaefer**. I would like to respond to that by saying while easements themselves will eliminate some of that feeling, it would be a mistake to think they are going to eliminate it totally because easements bring their own set of opponents, and the landowners and the political concerns remain as well.

Mr. **Irland**. I think I used the word "reduce" rather than eliminate.

Mr. **Reilly**. Additional questions, comments from the floor? Further comments over here?

[No response.]

Mr. **Reilly** [continuing]. Well, my sense is that we have got as expansive a list of very specific legislative proposals as we have had in any session so far, in the papers that were presented. Just going through them while you were making the presentations, there is a very specific focus by all of you experts in preparing this session. You really advanced the purpose of it, and I would like to thank you all very much.

We are going to proceed now to a panel on tax law incentives. We will take a minute break while we reassemble up here.

[Whereupon, a short recess was taken.]

Mr. **Reilly**. Could I ask you to take your seats, please? This panel is concerned with tax law incentives. We have been joined at this time by Senator Wallop again and by Congressman Lagomarsino from California.

Senator, do you wish to make an opening statement?

Senator **Wallop**. No. I really just wanted to thank my colleague from the House for coming over here. I think both of us agree that a good deal more that hasn't been done can be done, and it is in the national interest both in terms of budget as well as preservation to get on with it.

I really look forward to not only the presentation of several of the ideas that are coming out, some of which will be Congressman Lagomarsino's, some of which will be others', and the response to them so that we can perhaps be able to bring to the respective committees a record that is worthwhile and will support our claim that we can do a good deal for our country with a lot less money than we have been doing.

Do you have anything to say?

Mr. **Lagomarsino**. Mr. Chairman, would you like me to make my statement at this point?

Mr. **Reilly**. Please do.

STATEMENT OF HON. ROBERT J. LAGOMARSINO, A U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Mr. **Lagomarsino**. I really appreciate the opportunity to participate in this panel on tax law incentives for protecting lands for the public good, and I want to commend Senator Wallop for this workshop and the one that you held last summer. I think that finally we are focusing in on the truth and the fact that there just isn't enough really to do everything we want to do at one time, at least not in the traditional way.

There are a lot of innovative things that we ought to be looking at. I think out of all of this we ought to be able to come up with something that makes sense.

The protection and management of our Nation's lands is of particular importance to me. I try to spend a considerable amount of my time on this issue. As you all know, recreation areas, natural areas, key wildlife habitats and open spaces in this country have been disappearing at an alarming rate for many years. Once they are gone, it is essentially impossible to restore or replace them, and, as I say, I commend Senator Wallop for his efforts.

While continued Federal acquisition of needed conservation easements is a part of the solution, other essentially non-Federal solutions need, at least, non-Federal solutions of up front money to be developed and implemented. In order to help meet this need, I recently developed legislation which provides a number of land transfer tax incentives.

The legislation which I originally introduced as H.R. 4680 is designed to provide tax relief to those who sell certain land or easements to qualified agencies and organizations for conservation purposes. I received a significant number of support letters on H.R. 4680 and even more importantly, I think some very constructive improvement suggestions from a variety of conservation groups and others. The discussions following Senator Wallop's public land workshop last summer also provided some very useful additional information.

Accordingly, we redrafted this legislation to clarify several of the definitions and to avoid a conflict with existing tax incentives for donations of partial interest, and we reintroduced on May 21 a new bill, H.R. 6465. The primary purpose of the new legislation remains exactly the same as H.R. 4680, and that purpose is to exclude from gross income for income tax purposes amounts received from certain sales of key natural area lands to qualified organizations, including the various States and the United States, if the primary use of such land after the sale is for a conservation purpose, and that purpose is protected in perpetuity.

The primary change in this new legislation is to delete the definitions contained in 4680 and to adopt the conservation terms previously approved by the Congress and enacted into law in the Tax Treatment Extension Act of 1980, Public Law 96-541. As you know, the Tax Treatment Extension Act of 1980 insured the deductibility of the donation of gifts of partial interests in land for conservation purposes.

At the time, that proposal was subject to intensive review, and the result was I think a thorough and carefully structured law which should prove to be very useful in protecting land for conservation purposes. The Tax Treatment Extension Act is only applicable to partial interest donations that are within a carefully defined list of conservation purposes. The conservation purposes must be protected in perpetuity, and the recipient of the donation must be a qualified not-for-profit or governmental organization with the commitment and the resources necessary to protect the conservation purpose; so what we did, really, was to take the tax solutions worked out by Congress last session with regard to donations for natural conservation purposes, and applied them to sales for the same purposes.

One problem that we identified with H.R. 4680 was the possible negative impact on donations. The incentive to donate to a conservation organization for a conservation purpose would be lost if an incentive to sell also applied. Now we think we have corrected that situation with the new bill at least to some extent. I have structured the new bill so that it will complement, not restrict, existing incentives for donations.

The Tax Treatment Extension Act is applicable to the donation of a partial interest, that is, less than an owner's entire interest in a given area. The new bill covers the opposite situation where an owner wants to sell his entire interest rather than retain limited rights. In this manner an incentive to sell will not generally be applicable to the same interest in land that is covered by the Tax Treatment Extension Act. Generally he has to sell his entire interest to be covered by my bill. This could, of course, overlap with an ordinary donation of an owner's entire interest, but unlike partial interest donations, donations of this kind would not insure conservation protection and therefore generally serve a different purpose.

Now because of the critical wetland protection needs, my bill does include one partial interest situation, and that is conservation easements sold to qualified organizations for fish and wildlife conservation purposes. My bill also provides, and I think that although this was not even in the original draft of the new bill it may turn out to be the most important part, it also provides Federal estate tax relief in certain cases, permitting the value of qualified property transferred to a qualified organization to be considered as payment of part or all of the estate taxes due and the postponement of estate taxes due on qualified property being transferred to a qualified organization until the transfer is completed or canceled. This covers the situation where one or more of the owners of property in the process of being acquired by a qualified organization dies and there are insufficient funds available to pay the remaining owners who are otherwise immediately faced with having to pay substantial estate taxes, and not only that—substantial interest penalties—within 9 months.

In summary then, my bill excludes gain from the sale or exchange of certain real property to a qualified organization for conservation purposes, and the term "qualified organization" is given the same meaning as provided by the Tax Treatment Extension Act. Similarly, the term "conservation purpose" is defined in reference to that act but limited to three major natural conservation purposes—the preservation of land areas for outdoor recreation by or the education of the general public; two, the protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem; or three, the preservation of open space, including farmland and forestland where such preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local government conservation policy which will yield a significant public benefit.

While somewhat restrictive, these major natural conservation purposes are flexible enough to insure that areas sold to conservation organizations continue to be used and managed as necessary for maintaining the conservation purpose. Precise land management practices are not proscribed in the legislation, and traditional conservation management practices and recreation uses such as hunting and fishing could be continued without interruption or change.

However, the conservation purpose would have to be protected in perpetuity. As you have heard I am sure repeatedly throughout this workshop and the one that preceded it, many opportunities to retain lands for conservation purposes in this Nation are being lost every day. Immediate relief and effective action is urgently needed. I believe the enactment of legislation which uses tax incentives as a primary vehicle could be very helpful in preventing the continuing rapid loss of our ability to manage lands for conservation purposes, and I might add that I think it would also institute a system of fairness.

Under the present system, we have been, if anything, perhaps too eager in designating land for acquisition but less than eager or successful in designating funds to pay for it, putting many landowners in a very, very tenuous position. So, I am hopeful that the discussions in this workshop will result in a number of improvements in this area as well as other innovative techniques that can be put into use quickly and effectively, and to the benefit of everyone.

Thank you.

[The prepared statement of Mr. Lagomarsino follows:]

STATEMENT BY CONGRESSMAN ROBERT J. LAGOMARSINO
SENATE PUBLIC LANDS SUBCOMMITTEE WORKSHOP ON
LAND PROTECTION AND MANAGEMENT
PANEL: TAX LAW INCENTIVES
JUNE 15, 1982

MEMBERS OF THE PANEL AND OTHER WORKSHOP PARTICIPANTS:
I APPRECIATE THIS OPPORTUNITY TO PARTICIPATE IN THIS PANEL ON TAX LAW INCENTIVES FOR PROTECTING LANDS FOR THE PUBLIC GOOD.

THE PROTECTION AND MANAGEMENT OF OUR NATION'S LANDS IS OF PARTICULAR IMPORTANCE TO ME. I TRY TO SPEND A CONSIDERABLE AMOUNT OF TIME ON THIS ISSUE. RECREATION AREAS, NATURAL AREAS, KEY WILDLIFE HABITATS AND OPEN SPACES IN THIS COUNTRY HAVE BEEN DISAPPEARING AT AN ALARMING RATE FOR MANY YEARS. ONCE THEY ARE GONE, IT IS ESSENTIALLY IMPOSSIBLE TO RESTORE OR REPLACE THEM. I AM VERY PLEASED TO PARTICIPATE IN THESE DISCUSSIONS AND COMMEND SENATOR WALLOP AND THE COOPERATIVE RESEARCH SERVICE FOR THEIR INITIATIVE IN ORGANIZING THIS FOLLOW-UP WORKSHOP ON THIS VERY IMPORTANT TOPIC.

WHILE CONTINUED FEDERAL ACQUISITION OF NEEDED CONSERVATION EASEMENTS IS A PART OF THE SOLUTION, OTHER ESSENTIALLY NON-FEDERAL SOLUTIONS NEED TO BE DEVELOPED AND IMPLEMENTED. IN ORDER TO HELP MEET THIS NEED, I RECENTLY DEVELOPED LEGISLATION WHICH PROVIDES A NUMBER OF LAND TRANSFER TAX INCENTIVES. THE LEGISLATION, WHICH I ORIGINALLY INTRODUCED AS H. R. 4680, IS DESIGNED TO PROVIDE TAX

2. ROBERT J. LAGOMARSINO

RELIEF TO THOSE WHO SELL CERTAIN LANDS OR EASEMENTS TO QUALIFIED AGENCIES AND ORGANIZATIONS FOR CONSERVATION PURPOSES.

I RECEIVED A SIGNIFICANT NUMBER OF SUPPORT LETTERS ON H. R. 4680 AND SOME VERY CONSTRUCTIVE IMPROVEMENT SUGGESTIONS FROM A VARIETY OF CONSERVATION GROUPS, AND OTHERS. THE DISCUSSIONS FOLLOWING SENATOR WALLOP'S PUBLIC LANDS WORKSHOP LAST SUMMER ALSO PROVIDED SOME VERY USEFUL ADDITIONAL INFORMATION. ACCORDINGLY, I REDRAFTED THIS LEGISLATION SOMEWHAT TO CLARITY SEVERAL DEFINITIONS AND TO AVOID A CONFLICT WITH EXISTING TAX INCENTIVES FOR DONATIONS OF PARTIAL INTERESTS, AND REINTRODUCED IT ON MAY 21 AS A NEW BILL, H.R. 6465.

THE PRIMARY PURPOSE OF THIS NEW LEGISLATION REMAINS THE SAME AS H. R. 4680. THAT PURPOSE IS TO EXCLUDE FROM GROSS INCOME FOR INCOME TAX PURPOSES, AMOUNTS RECEIVED FROM CERTAIN SALES OF KEY NATURAL AREA LANDS TO QUALIFIED ORGANIZATIONS, INCLUDING THE VARIOUS STATES AND THE UNITED STATES, IF THE PRIMARY USE OF SUCH LAND AFTER THE SALE IS FOR A CONSERVATION PURPOSE, AND THAT PURPOSE IS PROTECTED IN PERPETUITY.

THE PRIMARY CHANGE IN THIS NEW LEGISLATION IS TO DELETE THE DEFINITIONS CONTAINED IN H. R. 4680 AND TO ADOPT THE CONSERVATION TERMS PREVIOUSLY APPROVED BY THE CONGRESS AND ENACTED INTO LAW IN THE TAX TREATMENT EXTENSION ACT OF 1980, PUBLIC LAW 96-541.

THE TAX TREATMENT EXTENSION ACT OF 1980 ENSURED THE DEDUCTIBILITY OF THE DONATION OF GIFTS OF PARTIAL INTERESTS IN LAND FOR CONSERVATION PURPOSES. AT THE TIME, THAT PROPOSAL WAS SUBJECT TO INTENSIVE REVIEW. THE RESULT WAS A THOROUGH AND CAREFULLY STRUCTURED LAW WHICH SHOULD

PROVE TO BE VERY USEFUL IN PROTECTING LAND FOR CONSERVATION PURPOSES. THE TAX TREATMENT EXTENSION ACT IS ONLY APPLICABLE TO PARTIAL INTEREST DONATIONS THAT ARE WITHIN A CAREFULLY DEFINED LIST OF CONSERVATION PURPOSES; THE CONSERVATION PURPOSES MUST BE PROTECTED IN PERPETUITY; AND, THE RECIPIENT OF THE DONATION MUST BE A QUALIFIED NOT-FOR-PROFIT OR GOVERNMENTAL ORGANIZATION WITH THE COMMITMENT AND RESOURCES NECESSARY TO PROTECT THE CONSERVATION PURPOSE.

IN ESSENCE, I HAVE TAKEN THE TAX SOLUTIONS WORKED OUT BY CONGRESS LAST SESSION WITH REGARD TO DONATIONS FOR NATURAL CONSERVATION PURPOSES AND APPLIED THEM TO SALES FOR THE SAME PURPOSES.

ONE PROBLEM INDENTIFIED WITH H. R. 4680 WAS THE POSSIBLE NEGATIVE IMPACT ON DONATIONS. THE INCENTIVE TO DONATE TO A CONSERVATION ORGANIZATION FOR A CONSERVATION PURPOSE WOULD BE LOST IF AN INCENTIVE TO SELL ALSO APPLIED. H. R. 6465 CORRECTS THAT SITUATION. I HAVE STRUCTURED THIS NEW BILL SO THAT IT WILL COMPLEMENT, NOT RESTRICT, EXISTING INCENTIVES FOR DONATIONS. THE TAX TREATMENT EXTENSION ACT IS APPLICABLE TO THE DONATION OF A PARTIAL INTEREST -- THAT IS, LESS THAN A OWNER'S ENTIRE INTEREST IN A GIVEN AREA. THIS NEW BILL COVERS THE OPPOSITE SITUATION; WHERE AN OWNER WANTS TO SELL HIS ENTIRE INTEREST RATHER THAN RETAIN LIMITED RIGHTS. IN THIS MANNER, AN INCENTIVE TO SELL WILL NOT GENERALLY BE APPLICABLE TO THE SAME INTEREST IN LAND THAT IS COVERED BY THE TAX TREATMENT EXTENSION ACT. GENERALLY, AN OWNER HAS TO SELL HIS ENTIRE INTEREST TO BE COVERED BY MY BILL. THIS COULD, OF COURSE, OVERLAP WITH AN ORDINARY DONATION OF AN OWNER'S ENTIRE INTEREST BUT, UNLIKE PARTIAL INTEREST DONATIONS, DONATIONS OF THIS KIND WOULD NOT ENSURE CONSERVATION PROTECTION AND THEREFORE GENERALLY SERVE A DIFFERENT PURPOSE. BECAUSE OF THE CRITICAL WETLANDS PROTECTION NEEDS, MY BILL DOES INCLUDE ONE PARTIAL INTEREST SITUATION -- CONSERVATION EASEMENTS SOLD TO QUALIFIED ORGANIZATIONS FOR FISH

AND WILDLIFE CONSERVATION PURPOSES.

MY BILL ALSO PROVIDES FEDERAL ESTATE TAX RELIEF IN CERTAIN CASES; PERMITTING THE VALUE OF QUALIFIED PROPERTY TRANSFERRED TO A QUALIFIED ORGANIZATION TO BE CONSIDERED AS PAYMENT OF PART OR ALL OF THE ESTATE TAXES DUE AND THE POSTPONEMENT OF ESTATE TAXES DUE ON QUALIFIED PROPERTY BEING TRANSFERRED TO A QUALIFIED ORGANIZATION UNTIL THE TRANSFER IS COMPLETED OR CANCELLED. THIS COVERS THE SITUATION WHERE ONE OR MORE OF THE OWNERS OF PROPERTY IN THE PROCESS OF BEING ACQUIRED BY A QUALIFIED ORGANIZATION DIES AND THERE ARE INSUFFICIENT FUNDS AVAILABLE TO PAY THE REMAINING OWNERS WHO ARE OTHERWISE IMMEDIATELY FACED WITH HAVING TO PAY SUBSTANTIAL ESTATE TAXES.

IN SUMMARY, MY BILL EXCLUDES GAIN FROM THE SALE OR EXCHANGE OF CERTAIN REAL PROPERTY TO A QUALIFIED ORGANIZATION FOR CONSERVATION PURPOSES. THE TERM "QUALIFIED ORGANIZATION" IS GIVEN THE SAME MEANING AS PROVIDED BY THE TAX TREATMENT EXTENSION ACT. SIMILARLY, THE TERM "CONSERVATION PURPOSE" IS DEFINED IN REFERENCE TO THAT ACT -- BUT LIMITED TO THREE MAJOR NATURAL CONSERVATION PURPOSES AS FOLLOWS:

- THE PRESERVATION OF LAND AREAS FOR OUTDOOR RECREATION BY, OR THE EDUCATION OF, THE GENERAL PUBLIC,
- THE PROTECTION OF A RELATIVELY NATURAL HABITAT OF FISH, WILDLIFE, OR PLANTS, OR SIMILAR ECOSYSTEM; OR
- THE PRESERVATION OF OPEN SPACE (INCLUDING FARMLAND AND FOREST LAND) WHERE SUCH PRESERVATION IS --
  - (I) FOR THE SCENIC ENJOYMENT OF THE GENERAL PUBLIC, OR
  - (II) PURSUANT TO A CLEARLY DELINEATED FEDERAL, STATE, OR LOCAL GOVERNMENTAL CONSERVATION POLICY, AND WILL YIELD A SIGNIFICANT PUBLIC BENEFIT.

WHILE RESTRICTIVE, THESE MAJOR NATURAL CONSERVATION PURPOSES ARE FLEXIBLE ENOUGH TO ENSURE THAT AREAS SOLD TO CONSERVATION ORGANIZATIONS FOR A CONSERVATION PURPOSE CAN CONTINUE TO BE USED AND MANAGED AS NECESSARY FOR MAINTAINING THE CONSERVATION PURPOSE. PRECISE LAND MANAGEMENT PRACTICES ARE NOT PRESCRIBED IN THIS LEGISLATION. TRADITIONAL CONSERVATION MANAGEMENT PRACTICES AND RECREATION USES SUCH AS HUNTING AND FISHING COULD BE CONTINUED WITHOUT INTERRUPTION OR CHANGE. HOWEVER, THE CONSERVATION PURPOSE WOULD HAVE TO BE PROTECTED IN PERPETUITY.

AS WE HAVE HEARD REPEATEDLY THROUGHOUT THIS WORKSHOP, MANY OPPORTUNITIES TO RETAIN LANDS FOR CONSERVATION PURPOSES IN THIS NATION ARE BEING LOST EVERY DAY. IMMEDIATE RELIEF AND EFFECTIVE ACTION IS URGENTLY NEEDED. I BELIEVE THE ENACTMENT OF LEGISLATION WHICH USES TAX INCENTIVES AS THE PRIMARY VEHICLE FOR ACCOMPLISHING THE OBJECTIVE COULD BE VERY HELPFUL IN PREVENTING THE CONTINUING RAPID LOSS OF OUR ABILITY TO MANAGE LANDS FOR CONSERVATION PURPOSES. I AM HOPEFUL THE DISCUSSIONS DURING THIS WORKSHOP WILL RESULT IN A NUMBER OF IMPROVEMENTS IN THIS AREA AS WELL AS OTHER INNOVATIVE TECHNIQUES THAT CAN BE PUT INTO USE QUICKLY AND EFFECTIVELY. THANK YOU.

Mr. Reilly. Thank you, Congressman. I think many of the comments that have been made and surely that we will hear in this session respond quite specifically to some of the measures in your bill.

I can recall myself seeing any number of opportunities lost to protect land because of the inflexibility of the State law particularly.

We will move now to our panelists and respondents. Panelists will have 10 minutes and respondents 6 minutes each, beginning with Mr. Lindsay Hooper from the office of Senator Malcolm Wallop, who is here from his deliberations in the Finance Committee I gather on the budget. Welcome.

STATEMENT OF LINDSAY HOOPER, OFFICE OF SENATOR MALCOLM WALLOP

Mr. Hooper. Thank you very much. It is my purpose in presenting this paper to discuss some of the existing tax incentives which are out there right now for land conservation, as well as suggesting some possible alternatives which may be implemented by the Congress to provide additional incentives for conservation purposes.

As most of you are aware, the Tax Treatment Extension Act of 1980 went a long way to provide additional incentives for land conservation. It provided the deductibility for contribution to the partial interest of land if the land fell into one of three categories of national importance, No. 1, for recreational purposes; No. 2, preservation of natural habitat; No. 3, open space. Open space includes areas of scenic value as well as areas that are consistent with the clearly delineated governmental conservation policy. The transfer itself has to protect the conservation value of the land. A recipient may either be a governmental entity, a public charity which is qualified to manage the resource that is obtained. The Tax Treatment Extension Act of 1980 provides most of the framework by which we can build and enhance the use of the Tax Code for providing land conservation incentives.

In developing the proposals which I will mention here today, there are certain assumptions that were made, certain guidelines that were established. First, they include the basic proposition that the decisions to make contributions of land for conservation purposes are in large part determined on the basis of economics. Second, tax considerations are a very important part of the equation in determining whether you are going to donate land or use it for another purpose. Third, it assumes that the national interest to encourage land preservation and conservation through the private sector rather than relying on Federal appropriations and Federal administration of public land. The fourth assumption is that the Tax Code is presently the most efficient vehicle to provide the needed incentives to tip the balance in choosing between competing interests toward preservation.

The question then becomes how do we implement these assumptions? The proposals in this paper build upon the basic structure in the Tax Treatment Extension Act of 1980, retaining as prerequisites for any changes the following guidelines: If the Tax Code is to be used to provide conservation and preservation, it must be structured to protect those areas that are truly worthy of protection. Tax incentives must only be available for lands within carefully defined natural resource areas. Second, the gift or sale must not only be of national importance but the gift must serve to protect the area. Third, the sale must be to a governmental entity or public charity qualified and permitted and with the resources to manage the interests consistent with conservation purposes in perpetuity.

The proposals themselves are three. The first deals with the mechanics on the Tax Treatment Extension Act of 1980. The act provides that existing governmental conservation policies are an important criteria in establishing the deductibility of donations. However, the act does not indicate how areas that are within the scope of those conservation policies will be identified. Successful implementation of the act requires a process to identify areas of national importance subject to governmental conservation policy. The act places the responsibility of developing regulations for the implementation of the act with the Department of the Treasury.

There has been some concern expressed as to whether the Department of the Treasury is the best agency to determine whether certain contributions to conservation interests are in the national interest. Our first proposal then is to take that authority from the Treasury. They have had well over 1 year now to develop regulations and as yet has not developed those regulations, so we propose to take that authority and place it with the Department of the Interior or the Department of Agriculture or both.

The second proposal deals with two possible alternatives for the sale and exchanges of land. The first alternative is to provide that you will not have to recognize the gain from the sale of land if you reinvest it. That reinvestment can be restricted to land similar to that which you just sold or there can be no limitation at all. This concept, which is a rollover concept, is also displayed in the Mathias bill, S. 1713, which provides for the sale of development rights for farmland. His bill says that if you reinvest the proceeds in those proceeds in qualified property, then no gain is recognized.

The second alternative is simply to exclude the proceeds of the sale from taxation altogether. This is the Lagomarsino legislation. This is not unprecedented in the Tax Code. There was similar treatment given to people who are 55 years or older who sell their residences and no gain is recognized at that point. Sales should be of an entire interest of land rather than partial interest. There are possible exceptions that you might want which should be considered. One the Congressman mentioned earlier was for fish and wildlife easements. Typically fish and wildlife programs have relied on easements for successful implementation of their programs. We do not believe that that package should be discouraged.

A second point would be that if someone has already made a contribution of a partial interest, they would be allowed to sell the remaining interest and get similar tax treatment.

The third alternative which could be improved upon as far as tax incentives for land conservation and preservation concerns donations. There are three possible changes that can be made. The first concerns tax credits for donations. This is sort of a living incentive to make donations and provides you with an incentive irrespective of what your relative income level is. If you are not paying a large tax bill right now, this would still give you an incentive to go out and sell or donate donations of land and gain a significant tax benefit from it. The second proposal would be to allow donations and retain the live estate with restrictions on the land so that the conservation policy which is meant to be achieved through the donation is continued until the property goes to whoever the recipient of the donation is. The third proposal would be to allow an estate to make donations and contributions of land and allowing the value of that land as an offset against the ultimate tax liability.

That is the conclusion of our proposals.

[The paper follows:]

June 14 and 15, 1982
Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands and Reserved Water
9:00 a.m. - 5:00 p.m., Room 3110 DSOB

Workshop on land protection and management

Tax Initiatives Concept Paper

The Tax Treatment Extension Act of 1980 provides preferred tax status for contributions of partial interests in land if several safeguards are met. (1) The land has to fall into one of three categories of natural importance -- recreation, natural habitat, or open space. The open space category includes areas of scenic value and areas that are consistent with a clearly delineated governmental conservation policy -- both subcategories must also provide a significant public benefit. (2) The transfer has to protect the conservation value of the land. (3) The recipient -- which may be either a governmental entity or a public charity -- must also be qualified to manage the resource. As structured, this law provides a very workable framework within which to expand and control tax incentives for natural conservation purposes.

A tax incentive approach is well suited to the preservation of natural areas. Choices between competing uses of land are typically economic. And taxes are an important part of this equation. A tax incentive toward preservation of specific areas will often tip the balance between competing uses. Given this advantage, State, local and private conservation organizations are provided an economic edge that permits them to play a greater role in the protection of areas of natural importance. The expansion of this role is a viable alternative to what has become the typical Federal solution -- at least over the last two decades -- of Federal acquisition and Federal management. Improved tax incentives could be an important alternative to Federal land acquisition with regard to three difficult problems facing the Federal Executive today -- providing protection for new parks authorized by Congress but not yet established on the ground; assisting State, local and private efforts in protecting other areas of natural importance; and, protecting the older parks and wildlife areas from developing threats.

The tax initiatives concept paper is designed to build upon the structure of the Tax Treatment Extension Act to provide additional tax incentives primarily at the State, local and private level for the protection of these types of key natural areas. It consists of three proposals. (1) The first recommendation is to place legal responsibility to identify many of these key natural areas with the Secretary of the Interior (and Agriculture). At this point neither the Tax Treatment Extension Act nor the Department of Treasury has established a clear process to identify those natural areas that are "consistent with a clearly delineated governmental conservation policy." Although Treasury has been asked to establish regulations on this provision, it has not yet done so. The governmental conservation policy subcategory of the open space provision is important and additional certainty and professional expertise needs to be established. The tax initiatives package would place this responsibility with the Departments administering governmental conservation programs -- primarily Interior and Agriculture.

(2) The second recommendation is to provide tax incentives for sales of lands of established natural importance to qualified conservation organizations for a conservation purpose. Capital gains from such a sale would not be taxable if the lands are safeguarded.

(3) The third recommendation would be to improve incentives for donations of these areas to qualified conservation organizations for a conservation purpose. The value of such a donation would be established as a tax credit -- available as a carry-forward until exhausted; owners would be permitted to retain a compatible life estate interest; and,, estates would be permitted to make such a donation as an offset against Federal inheritance taxes.

Based in part upon the tax initiatives concept paper, Congressman Lagomarsino has introduced a new Bill -- H.R. 6465 -- that primarily addresses the incentive for sales recommendation.

Mr. Reilly. Thank you. We will turn now to the respondents; first, Mr. Kingsbury Browne, Esq., of Hill & Barlow.

STATEMENT OF KINGSBURY BROWNE, ESQ., HILL & BARLOW

Mr. Browne. Thank you, Senator, Congressman. I am a Boston tax lawyer; I have been fortunate enough to spend some of my time thinking about the relationship between Federal tax policy and administration of land conservation, and have worked with groups across the country. I am not here in any representative capacity. I have had the benefit of what I have learned from a great many people, but of course, not being here in a representative capacity, I paid my own transportation, but I am delighted to do so, and I am delighted to have had the opportunity to read the work that is embodied in the very brief and precise summary by Mr. Hooper. It really is a very broad sweeping report and it has three parts, as he indicated, one dealing with the technical problems that we have with the 1980 Tax Act, the second with tax changes that are really within the established parameters which don't present quite the substantive problems that the third does which really would call for two additional land protection area incentives.

I would like to comment very briefly on the first part, and that is the changes that were brought about by the 1980 act. That act did liberalize tax incentives for conservation easements, but in my opinion, in only one respect, and that dealt with the retention of mineral rights. In every other respect, that act turned back the clock when it comes to the use of tax incentives in conjunction with conservation easements.

We had a long period of liberal policy, liberal regulations during the sixties and seventies, and the 1980 act turned us back to the problems that would take a long time to resolve. I agree with the point made in the report that the 1980 legislation is not going to accomplish what Congress intended. I agree with that conclusion. I do not believe—the report goes on to say that the authors do not believe that the eventual regulation can ever provide sufficient certainty. Safe harbors is perhaps a better expression for that. I agree with that basic conclusion. The question that I am left with is whether the solution suggested by the report for a certification process is really a wise one.

I think that there would be a great deal of criticism of introducing into this already highly technical area another level of certification by other agencies. That statement of concerns at the State level was made earlier from the floor. I suggest that there is another approach really embodying the certification process, embodying the standards that were developed to protect the public in the 1980 act, That approach is to consider lodging a certification process in your local land conservation organization.

The problems with the 1980 act are basically that it approaches conservation easement partial interest as a transaction. When you look at the variety across the country, the diversity of the transactions is mind boggling, but if you look at the recipients of the easements, you then begin to look at the institutions involved and then begin to inquire whether those institutions can supply the safeguards that are needed. Basically, our tax policy for many years has been to look at the qualifications of the receiving institution, making the distinction between private and public foundation. Your local trusts are almost without exception public foundations with widespread public support. I think what is not fully appreciated today is the number of them across the country and the rapidly expanding movement.

There are over 418 that we have identified in 43 States; 92 percent of them are membership organizations supported by members. Before 1950, there were 36 organizations in 20 States. Fifteen years later, 1965, the number exceeded 100 and the increase has been more rapid since that date bringing it to well over 400. These organizations began largely in the Northeast, but they are rapidly expanding all across the country. Some 23 percent of the growth in the last 5 years has been in the far West and in the Rocky Mountains. It is a very, very impressive movement that is taking place, and it seems to me that when you talk about the need for promoting private incentive, local participation, the need for experimentation, the involvement of people, right before our eyes may be a mechanism that can be adapted to the work that has gone forward to date. I think that by focusing on the certification, the ambiguities of the 1980 act were made very clear. There is need for identification. One of the suggestions is to transfer that certification from governmental bodies to really quasi-governmental bodies for local land trusts.

[The prepared statement of Mr. Browne follows:]

WORKSHOP ON LAND PROTECTIONS AND MANAGEMENT

held by

THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER OF

June 14 and 15, 1982
Room 3110 Dirksen Senate Office Building

Tax Law Incentives

Statement by
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225 Franklin Street
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June 15, 1982

WORKSHOP OF LAND PROTECTION AND MANGEMENT

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Mr. Chairman:

I am Kingsbury Browne, A Boston lawyer who has been practicing tax law for over 30 years. Beginning in the late 1960s part of my practice focused on the relationship of federal tax policy and administration to the protection of open space. Foundation grants have made it possible for me to examine land conservation programs in the Rocky Mountains and on both Coasts. I expect to finish shortly a book on federal tax incentives as they affect the preservation of open space. While I provide legal assistance to many land conservation organizations and land owners across the Country, I am here today responding as an individual and not in any representative capacity.

The content of these proceedings which expand upon similar proceedings held in this hearing room eleven months ago reaffirm the widely perceived need to continue the indirect expenditure of federal funds to protect those critical natural resources that we have in mind when we speak of open space: resources such as natural habitat, scenic vistas and water recharge areas. There is now little prospect of adding direct expenditure programs to the budget to achieve these ends so the only course open is the wise use of tax incentives -- at least those that have existed for years and on which conservation organizations and individuals have relied.

I wish to limit my oral response to those tax incentives already in place, especially the deduction for the value of charitable gifts of conservation easements. The Tax Treatment

Extension Act of 1980 recodified the rules for such deductions. In one respect that Act liberalized existing law which had not theretofore allowed a charitable deduction to taxpayers who had transferred their fee interests in property to charitable organizations while retaining valuable mineral rights. With that one exception, I believe the 1980 legislation sharply curtailed the deductibility of charitable gifts of conservation easements for open space protection. In material sent to me and presented here today, the statement is made that "the mechanics of the Act need to be improved. As drafted the [1980] Legislation is not going to accomplish what Congress intended." (p. 4). I agree with that conclusion. The panelists in their presentation conclude that remedial legislation is needed. I concur because I do not believe that eventual regulations can ever provide sufficient certainty -- safe harbors perhaps is the better expression -sufficient to remove the risk of adverse income and gift tax costs. Risk taking is not characteristic of charitable giving.

One of the recommendations for providing certainty is to introduce by legislation a certification process to be lodged in the Departments of Agriculture and Interior. While not yet clear, the process would also involve certification of State programs for identifying critical open space.

There will likely be a lot of public criticism of this solution on grounds of bureaucratic red tape and costs which I do not propose to explore at this time. Rather, I wish to suggest that a different, very promising legislative approach be considered. The 1980 Act that has now effectively shut down many easement programs -- in Virginia and Maryland, for example -- focused on the transaction, itself. Would the easement protect scenic or other qualities "of true conservation value"? With minor exceptions, the Act did not focus on the recipient of the easement. I am suggesting that most land conservation organizations by their very nature and structure can be relied on to carry out the certification process.

Until 1969, charitable deductions depended largely on the status of the donee. In 1969 Congress sharpened that focus by distinguishing between family and publicly supported foundations and according the latter greater tax incentives and freedom from regulation. Almost without exception the conservtion organizations that accept easements today fall in that second category of tax favored publicly supported organizations. Yet the 1980 Act largely gave little weight to the qualities of the recipient organization and chose to focus on the land itself, its scenic and habitat qualities, its significant benefit to the public. The problems of the transactional approach are endless. What is perceived as scenic in the eye of the beholder in New England may not arrest the eye of an inhabitant of Jackson Hole.

We have not in most charitable giving tended to focus on the purpose of the gift. We do not ask for assurances that a hospital will use a grant to pursue only programs of significant public benefit. We are content -- up to a point -- to rely for these things on the character and judgment of the recipient hospital.

A different approach has been taken with gifts of partial interests in land. Largely, I think, because many do not perceive of land conservation organizations -- land trusts, to use the emerging name -- as established institutions worthy of public confidence. The public that chooses to entrust the delivery of medical care to private institutions perhaps has not been ready to entrust land use decisions involving significant public benefit to private land conservation orgnaizations. The record suggests the time may be at hand to do so.

Local land conservation organizations -- land trusts -- now number more than 418 and are located in 43 states. 92% of these local organizations are membership organizations supported by more than a quarter of a million members. With few exceptions they have qualified as publicly supported organizations and therefore favored over private foundations in terms of tax incentives and freedom from administrative burdens. What is also noteworthy is their rate of growth. Before 1950, there were 36 organizations in 20 states; among them the Society for the Protection of New Hampshire Forests and the Trustees of Reservations in Massachusetts. Fifteen years later in 1965, the number of organizations exceeded 100. Between 1965 and 1974, an additional 174 land trusts were established. In the six year period 1976 - 1981, another 100 appeared. Twenty-three percent of the most recent growth was in the Far West. That rate of growth was also matched in the Great Lakes and Mid-Atlantic regions.

These 418 organizations now protect wildlife habitat, scenic and recreational lands, wetlands, riparian lands, agricultural and forest lands, rights of ways for trails, historic and archeological sites, caves, grasslands, sand dunes, water recharge areas, community gardens and neighborhood open space, natural hazards, and the land base for social or economic alternatives. Forty-one percent of the organizations operate within a single town or community, 17% at the county level and the rest over larger areas. In terms of acres protected by conservation easements the South leads. The average size of a parcel protected is 3,234 acres in the Rocky Mountains and 61 acres in New England. The State of California makes direct grants of state funds to private land trusts to support their work.

The design of a federal certification program to deal with this diversity is mind-boggling. More important, the desired certification program may already be in place. A land trust seeks easements only on the critical lands in its community. The notion they are in collusion with land owners seeking to perpetuate private interests simply does not accord with their broadly based public support, the diversity of their boards, their membership, and, perhaps most important, the professional commitment of their staff personnel.

These organizations cannot protect more than a miniscule fraction of the Nation's open lands. But that fraction involves the most critical natural resources left in local private hands. Most land trusts operate locally. They initiate and experiment. The federal dollars provided by way of tax support are creating an inventory of human capital particularly suited to making land use decisions in the public interest.

Before any form of certification is adopted as a solution to the problems presented by the 1980 Act, the question should be asked whether the land trust movement, itself, is perhaps better prepared. There is so much talk of the need for new institituions and local initiatives and right under our noses there is the great promise of the Land Trust movement that so far has not really been examined and utilized in the structure of the Internal Revenue Code.

A Land Trust can and should take a hand, in my opinion, in dampening valuation abuses. It should be prepared to put its exempt status on the line if the pattern of its conservation work shows private inurement.

(The statistical information is drawn from a study conducted in 1981 by the Land Trust Exchange, 3 Joy St., Boston, Massachusetts 02108 under the direction of Terry Bremer and Russell Cohen.)

Mr. **Reilly**. Thank you, Mr. Browne. I turn now to Mr. Edward Thompson, Jr., the American Farmland Trust.

STATEMENT OF EDWARD THOMPSON, JR., COUNSEL, AMERICAN FARMLAND TRUST

Mr. **Thompson**. Thank you, Bill. I want to congratulate Lindsay on a fine paper. I recognize there is a synthesis of ideas that I have heard from others from a variety of organizations concerning the various kinds of resource lands, but since the American Farmland Trust is interested in protecting the Nation's agricultural capacity, I would like to limit myself to agricultural lands and incentives toward the voluntary private protection thereof.

I am talking about those farm and ranchlands around the country which because of their inherent productivity and strategic location—that certainly doesn't include all of them—have a public value attached to their conformation.

Believing that there was a need for additional incentives to private agricultural land protection, the American Farmland Trust convened its own Federal Tax Initiative Workshop last August to try to see what we could find here. We brought together experts in tax law, land market, economics, and of course, agriculture, the people who own the land and on whom the incentives would have to operate. We spent a few days and rejected quite a few proposals, but ultimately came up with a package of three incentives that is to be used in the ongoing context of farm, ranch, business, and estate planning. It is not something that is simply tacked on to what we are doing.

The idea here is to provide an economic realistic alternative to that landowner, the sale of his land, and to integrate that conservation alternative into the management of the farmer.

Our package is actually quite similar to the three points that Lindsay raised so perhaps I will deal with the paper simply by explaining how our proposals would differ. There are three of them. First is modification of the mechanics of section 170 regarding the deductibility of donations of easements.

The second would be a comprehensive tax credit similar to what Lindsay has proposed with similarly broad limitations and carryovers for donations and market sales, donation of qualified agricultural land, and the third is an incentive for the sale of agricultural land that is really quite different. We have no quarrel with the basic approach taken by Congressman Lagomarsino to encourage the sale of entire interests in land and in some cases less than fee to public and private conservation uses, but when you are dealing with the agricultural land context, a vast percentage of land is privately owned, and you are dealing with a somewhat different situation. We certainly don't want all of that land, even if one limits it to well-defined qualified land, to become public, so we have proposed an alternative, the notion of excluding capital gains on the sale of qualified farmlands to a qualified purchaser, be it public or private. A qualified purchaser wouldn't necessarily have to be a public conservation agency. Let me preface my explanation by saying that consistent with the principles that are now embodied in section 170, the conservation purpose should be in private ownership, private stewardship to fulfill that purpose.

The basic problem is to encourage farmers to sell land to other farmers, those who know how to and will continue to make it produce. These purchasers will generally only pay the agricultural value of the land, that amount of money they can afford to pay and still get a return by farming. Because they are only paying for the agricultural component of the land rather than its development component as well, we think there is a separation here. The potential for incentives to sale conflict with incentives to donate don't exist in this situation. The tax credit would apply to the development for gains exclusion, and the sale of agricultural component in effect would apply in that context.

Now, of course, there is always potential for abuse, namely, that some farmer or rancher would decide he wants to speculate rather than farm. We would recommend a couple of conditions to make sure that the possibility of speculation is minimal. The first would be to insure that the purchaser farmer or rancher in essence would be qualified. For example, you could apply such standards as are in the Code today relating to let's say he must have earned 50 percent of gross income from farming within the last few years. There are other tests of course, that can be applied to identify his track record.

The second safeguard would be to provide something akin to a recapture provision. Because it would be unworkable to look back to the original owner of the land and try to recapture the gain there once the chain has become attenuated, we suggest that when the chain of farmer or rancher and tenure is broken, that is when the conservation purpose is not manifest, the gain be treated as ordinary income providing a measure of recaputre. If you want to tighten it up you could do things like impute all of the gain to the early sale or you could tinker with the basis that is taken by the successive farm purchaser. We believe those two basic condiitions would insure that the conservation purpose, namely, keeping it farmland, would be served.

We would also limit these provisions only to certain well-defined qualified agricultural lands, again consistent with what exists now in section 170. Consideration should also be given when you are trying to create sales in this private context, to applying maybe stricter tests, perhaps something to the effect that the State or local conservation policy has to be backed up with, one, a clear identification of the agricultural lands to which the policy applies within the local jurisdiction.

Mr. **Reilly**. Time is up.

Mr. **Thompson**. In addition, other tests might include identification of a means by which the locality has to protect the land beyond the Federal incentives, and finally, a means for certification that the applicability of the provisions here would achieve the conservation purpose.

[The prepared statement of Mr. Thompson follows:]

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STATEMENT OF EDWARD THOMPSON, JR., COUNSEL, AMERICAN FARMLAND TRUST, ON AGRICULTURAL LAND PROTECTION TAX INCENTIVES, BEFORE THE PUBLIC LANDS AND RESERVED WATER SUBCOMMITTEE OF THE U.S. SENATE ENERGY AND NATURAL RESOURCES COMMITTEE, JUNE 15, 1982

STATEMENT OF EDWARD THOMPSON, JR., COUNSEL, AMERICAN FARMLAND TRUST, ON AGRIUCLTURAL LAND PROTECTION TAX INCENTIVES, BEFORE THE PUBLIC LANDS AND RESERVED WATER SUBCOMMITTEE OF THE U.S. SENATE ENERGY AND NATURAL RESOURCES COMMITTEE, JUNE 15, 1982

Introduction

Senator Wallop and members of the panel, I want to thank you on behalf of the American Farmland Trust for this opportunity to appear here today. As you know, the American Farmland Trust (AFT) is a private, nonprofit organization committed to the protection of agricultural land resources and to the promotion of farming opportunity. We are funded by private contributions and seek to achieve our objectives by helping to develop appropriate public conservation policies, by educating the public about the importance of agricultural resources, and by intervening in the marketplace for farmland to ensure that it will remain in agricultural use.

We are especially pleased that the Subcommittee is interested in federal tax incentives for the protection of agricultural lands, because AFT itself has devoted quite a bit of research to this topic. Believing that new tools for private-sector farmland protection were needed, last August we convened a group of tax attorneys, land economists and farm businessmen to come up with incentives that would meet the tests of public policy and would work in the real world.

Farmland Conversion

The United States is losing prime agricultural land to nonagricultural uses at a significant rate -- 3 million acres a year, according to the National Agricultural Lands Study. Some may quibble about the exact extent of this loss, but this debate is largely academic because this country will have to cultivate more acreage -- not less -- to meet future demands for food and other agricultural products. We are going to have to dip into our reserve, regardless of how this debate eventually comes out.

The problem is, however, that our reserve of potential agricultural land has been held in reserve largely because it is less suitable for food production than the prime farmlands that are now being lost to urban development. It is generally more erosive, costs more to cultivate and maintain, and generally will not yield as much as prime land. The more we as a nation have to rely on this so-called reserve -- much of it now in range and forestry uses -- because of prime land conversion, the greater will be our agricultural troubles. As Secretary Block has said, "The chain of problems will be lengthy and expensive."

Farm Conflicts and Capacity

Another thing that is often overlooked in the debate over the loss of farmland is the indirect effect of land conversion. For every acre of farmland or ranchland that is directly consumed by nonagricultural development, additional acreage is economically disadvantaged for the production of food. Working farms and the agriculture industry -- and it is an industry -- simply do not mix very well with, for instance, suburban subdivisions. Land use conflicts have inevitably arisen as a result of suburban encroachment into traditional agricultural areas throughout the country.

So serious and widespread has the problem of farmers' nuisance liability become, that in just the past three years 35 states have adopted so-called "right to farm" laws in an attempt to protect them. Nothing so embodies what has been called the "race between the plow and the bulldozer" as the scramble that is now going on among farmers in metropolitan fringe communities to beat their neighbors to the bank, to try to sell their land for development before the development of their neighbors' land cripples their own farm operations.

This race must stop, because it is one that the majority of farmers are destined to lose. Unless suburban growth proceeds exponentially -- in which case the direct conversion of farmland will, of course, become even more serious -- more farms will be affected by the "nuisance shadow" of suburbia than can possibly be sold out of agriculture at any point in time.

National Interest

Although local agricultural communities are hardest hit by both the direct and indirect effects of farmland conversion, there is, as Congress recognized in passing the Farmland Protection Policy Act of 1981, a national interest, as well, in forestalling this trend. The acre-by-acre loss of farmland adds up to millions of acres a year, diminishing U.S. agricultural production capacity at a time when, because of other pressures on agriculture -- ranging from soil erosion to depletion of water resources to the increasing costs of energy-based farm technology -- we can ill afford to squander our land resources.

What is more, the nuisance aspect of mixing farms and suburbs threatens the economic viability of agriculture to a significant extent in many of the nation's farm production regions. That these pressures on metropolitan farms could affect the nation's overall agricultural production capacity is illustrated by the fact that, in the Northeast and Pacific agricultural regions -- including California, the nation's largest farm producer -- half of the value of agricultural production comes from the counties within the Standard Metropolitan Statistical Areas. Even in the Corn Belt, fully one-fifth of farm production comes from these counties adjacent to cities of significant size.

There is, thus, ample justification for further federal action to help prevent unnecessary farmland conversion, to supplement the efforts being made toward this goal by hundreds of local governments and dozens of states. To my way of thinking, the federal government can do this in several ways.

The federal government should put its own house in order and stop subsidizing the unnecessary conversion of farmland. This is, of course, the objective of the Farmland Protection Policy Act, which requires federal agencies to examine their programs and to come up with ways of fulfilling their missions without aiding and abetting farmland conversion. One of the ways in which agencies can do this is by directing their investments in rural development away from prime farmlands identified by states and localities as important. Congress may wish to consider ways of encouraging this progress, as it did, for instance, by imposing a 2 percent interest surcharge on loans made by Farmers Home Administration for private development of prime farmlands. Such measures will not and should not stop growth and development -- for there is plenty of suitable land available for development -- but it will give the right market signals to the private sector so that their incentives will more nearly match the public goal of conserving our best farmlands.

Tax Incentives

Providing the right market signals and incentives is also the role of federal tax law as it affects the protection of agricultural land. At the bottom line, agricultural land is being sold out of farming because development pays more than growing food in certain areas. The farmer or rancher, rational economic being that he is, has no financially realistic alternative to the sale of his land to the highest bidder in order to recover his equity in the land for retirement. Some states, local governments and private organizations like AFT are trying to provide the farmer with such an alternative by purchasing development rights to agricultural land, thereby creating an incentive for land protection. But federal tax policy tends to work at cross-purposes with these initiatives. The proceeds from the sale of development rights -- or conservation easement, if you prefer -- are subject to federal income taxation. In effect, states and localities are paying the federal treasury to protect agricultural lands. Senator Mathias' bill, S. 1713, would help correct this anomalous situation by helping to stretch state and local resources.

AFT Package

Let me now get right to the heart of the proposals contained in the discussion paper on federal tax incentives prepared for this workshop. I will respond to these proposals by comparing them with the package of tax incentives that emerged from AFT's own workshop last August.

What AFT set out to do was to come up with a set of incentives to farmland protection that would operate in the context of overall farm and ranch business and estate planning -- the market context in which landowners now operate and to which any incentives must, in our view, be responsive to be truly effective. Our package of incentives contains three principal elements: (1) a revision of the mechanics of determining the eligibility of donations of conservation easements on farmland for federal tax deductions; (2) the exclusion of capital gains taxation of transfers of certain agricultural lands from farmer-to-farmer, or rancher-to-rancher as the case may be; and (3) a comprehensive credit against federal income, estate and gift tax liability for charitable donations and bargain sales of certain agricultural lands, the mechanics of which would parallel the revisions suggested above. Let me review these in some detail and compare them to what has been proposed in the discussion paper.

I. Revise Section 170

We favor a revision of the mechanics of determining the eligibility of charitable donations and bargain sales of agricultural conservation easements under Section 170(h)(iv)(A)(iii) of the Internal Revenue Code. As the discussion paper notes, the Treasury Department has not yet issued regulations to implement this provision, a year and a half after it became law. More significantly, in my personal opinion, the paper questions whether the IRS has the expertise to pass judgement on the critical questions of the adequacy of state and local conservation policies and whether a public benefit flows from agricultural land conservation.

USDA Responsibility

Just as the Department of the Interior and state and local historic preservation authorities now exercise the responsibility of determining the merit of historic preservation initiatives for federal tax purposes, so too should the Department of Agriculture be given this responsibility with respect to evaluating the worthiness of donations of agricultural conservation easements under Section 170. The Agriculture Department certainly has the expertise to do so and, importantly, the field staff capable of working closely with state and local agricultural policymakers.

State and Local Delegation

The historic preservation model was the inspiration for the recommendation by AFT's own expert advisors that responsibility for determining public benefit under Section 170 be further delegated, as it has been by Interior in the historic context, to the state and local authorities who have adopted agricultural land conservation policies. Under this approach, the public benefit test would be satisfied if the donation of an agricultural conservation easement is certified by state or local authorities to serve the purpose of their conservation policies. USDA oversight would ensure that the state and local policies are more than window-dressing. The role of Treasury would be limited to questions of valuation of the gifts.

II. Farmer-to-Farmer Transfers

We favor, as part of a comprehensive package of practical incentives to farmland protection, the enactment of a capital gains exclusion for the proceeds of transfers of certain, qualified agricultural lands to qualified farmer or rancher purchasers; in effect, farmer-to-farmer transfers. This proposal is not unlike that contained in the discussion paper recommending a capital gains exclusion on the sale of conservation lands. By selling agricultural land to another farmer or rancher instead of to a developer, the landowner generally receives less-than-fee value for his property. An agricultural purchaser cannot afford to pay more than the agricultural value of the land and still emerge with a profitable enterprise that will allow him to continue farming. The seller is giving up something of significant value, and will need a powerful incentive to do so -- an incentive that goes beyond a stimulus to his charitable instincts.

Although the land would not be legally restricted against nonagricultural uses by this provision, the conservation purpose of protecting its agricultural capacity would nevertheless be served by the tenancy of a qualified farmer or rancher purchaser. The corollary of the above proposition is that a farmer or rancher will not ordinarily purchase ground unless he intends to farm it. Of course, there is always the possibility of abuse, so we would impose two conditions on the exclusion.

Qualified Purchasers

First, farmer and rancher purchasers must have a track record of engaging in agricultural production, for example, as the owner or operator of a business that derives at least 50 percent of its gross income from agriculture, or as the heir of such an owner or operator -- the son who wants to take over the farm. In this regard, the notion of a "qualified heir" contained in Section 2032A of the Code would be a useful starting point for defining more precisely the qualifications of the farmer or rancher purchaser for purposes of the transfer exclusion.

Recapture

Second, we would recommend that the exclusion provision includ a disincentive to later sale of the property out of agriculture. When the chain of farmer tenure is broken, the gain on the sale of the land should be treated as ordinary income taxable to the seller in the year of sale. This, of course, is not strictly a recapture provision -- true recapture would apparently require the Treasury to look back to the original seller, and in our view would make the proposal unworkable because of the uncertainty -- but it has that effect. No doubt, further refinement of this feature is possible, for example, by imputing all of the gain to the year of sale regardless of the terms of sale, or by tinkering with the basis taken by the purchaser of the land. Ultimately, this feature should not only act as a disincentive to the frustration of the conservation purpose, it should also return to the Treasury at least a portion of the value foregone as a result of the conservation exclusion if the conservation purpose were ever frustrated.

Specific Farmlands Limitations

As we propose it, the farmer-to-farmer transfer exclusion would also satisfy the other principle applicable to the use of the federal tax code for land conservation, namely, that only certain, carefully defined resource lands be targeted. The rationale for applying this principle is twofold: to prevent a raid on the federal treasury without correlative public benefit, and to prevent the conservation of lands more appropriate for developmental uses.

To serve these legitimate objectives, we would limit the farmer-to-farmer transfer exclusion to certain agricultural lands determined by states and local governments to be significant for future agricultural production. As suggested above, the USDA would have an oversight role to ensure that the line defining these agricultural conservation lands is not overdrawn. USDA oversight would serve to apply some basic statutory criteria that go beyond those in Section 170 of the Code in recognition that the tax incentive provided by our proposal is more expansive.

Ideally, the state or local agricultural conservation policy prescribed by Section 170 should be backed up by the following basic elements: (a) a clear delineation of the lands within its jurisdiction that are to be conserved for agricultural production purposes -- this should specifically exclude lands needed for reasonably foreseeable urban growth within a realistic planning horizon of perhaps 10 years; (b) a statement of the means by which the jurisdiction intends to encourage the conservation of these agricultural lands -- the state or local means should go beyond the federal tax incentives made available, and may include many of the measures, ranging from agricultural zoning to the purchase of development rights, now being used by states and localities to conserve agricultural lands; indeed, the idea here is to have federal tax policy complement and encourage state and local initiatives; and (c) an officially-sanctioned process for carrying out the means selected for conserving agricultural lands, including a means of certifying that the application of the federal tax incentives described here will serve the conservation policy objectives of the jurisdiction.

As in the historic preservation analog, USDA could certify that state and local jurisdictions have met these criteria in adopting policies applicable to carefully defined agricultural lands. It could, as an alternative, certify state enabling legislation under which local policies and programs would function, a closer analogy to the Historic Preservation Act. And, if this is done, agricultural lands that should be conserved will be conserved -- producing a public benefit concomitant with the federal revenue foregone -- while those lands that ought to be developed, in the judgement of the state and local officials who have traditionally exercised this judgement, will be developed. The two purposes of requiring that the conservation lands be carefully defined will be served.

Further Limitations

We would, however, recommend one additional limitation on the lands to which the foregoing capital gains exclusion would apply. In what might be called the "deep countryside," where there is little development pressure, farmers generally have little choice but to sell their land to another farmer. Thus, the availability of the capital gains exclusion on farmer-to-farmer transfers in these areas probably could not be said to result in a public benefit equivalent to the revenue that would be foregone. We would recommend that this exclusion apply only within SMSA counties -- the metropolitan agricultural areas I discussed earlier, where a significant percentage of the value of farm production accrues, and where the conversion of farmland is the greatest threat. Because there are few SMSAs in the Western United States, where energy boom towns and recreational development nonetheless pose a threat to agricultural capacity, we would recommend that the farmer-to-farmer exclusion also apply in counties that are either (a) within the top 5 percent of the counties within a state in terms of population or (b) within the top 5 percent of the counties within a state in terms of population growth rate over the last 5 consecutive years. (We do not believe that this further limitation should also apply to the tax credit discussed below for easement donations, since in the latter case the value of agricultural easements in the deep countryside would be close to zero.)

III. Tax Credit

We favor the proposal of the discussion paper that a tax credit be available for donations and bargain sales of conservation easements that protect the agricultural capacity of well-defined agricultural lands. As we propose it, the credit would be availabl against federal income, gift and estate tax liability, without limitations on the percentage of tax liability and with an unlimite carry forward. Heirs of a deceased farmer could donate easement within 2 years of death and still qualify.

The discussion paper points out correctly that, in general, tax deductions for such easement donations are of little value to farmers and ranchers whose gross income is slight in comparison with the value of their agricultural land that they are asked to give up in exchange for tax deductions. Both equity and the practical matter of providing adequate incentives seem to dictate that tax credits are preferable to deductions.

Sales vs. Donations

The discussion paper expresses the concern that incentives to the sale of conservation lands not become a disincentive to the donation of interests in such lands. We share that concern. Our farmer-to-farmer transfer exclusion, which would apply in effect only to the agricultural fee interest in land, will not conflict with our tax credit proposal, which applies only to the development interest (conservation easement) in the land. Although they are mutually exclusive, these two provisions, along with the recommendation that the mechanics of Section 170 be modified, are, however, designed to work together in the context of overall farm business and estate planning to provide a clear incentive for agricultural land conservation.

Farm Business and Estate Planning

The farmer or rancher's land has been called his "pension plan," representing as it does his principal source of retirement income and equity against which he can borrow to raise capital to improve his operation. Too often, his only alternative for achieving his objectives is, if he wants to raise cash, to mortgage the property to one who is not necessarily dedicated to farming it, and ultimately to sell it to the highest bidder to provide retirement income. Our package of tax incentives was designed with this farmer or rancher in mind -- indeed, its design was the result of collaboration with agricultural producers. The two basic incentives -- credits for easement donations and capital gains exclusion on the sale of the fee to another farmer -- can be used by the farmer or rancher in planning his operation and for his retirement, giving him a realistic conservation alternative.

To illustrate, if, during his active farming lifetime, the farmer needs to raise additional capital to finance improvements or to expand his operation to take advantage of economies of scale, he may decide to donate -- or to sell at less than fair market value -- an agricultural conservation easement on a part or all of his farmland. (Easements on a part of a farm would be subject, of course, to state and local certification to ensure that a legitimate conservation purpose is served.) The tax credit would enable him to raise that improvement capital by, in effect, sheltering his farm income and allowing him to dedicate it to such improvements -- or, just possibly, to help him pay off a debt that might otherwise mean foreclosure.

When the farmer makes a decision to retire, he can then sell his land to a neighboring farmer -- or to his son -- and earn a higher return than would otherwise be possible because of the capital gains exclusion. This return would still, in most cases, not equal that which he could earn by selling at top dollar to a developer, even though the latter transaction would be taxed. But the availability of the tax credit for easement donations -- which he could ensure that he ultimately receives a return that is comparable. The options available to the farmer or rancher are virtually limitless, enabling him to plan his business and retirement to suit his individual preferences and needs as well as to conserve his land. That is real private incentive.

Cost

In conclusion, let me anticipate what will probably be the most strenuous objection to this package of tax incentives, namely, its cost to the federal treasury. In comparison with the federal tax incentives that are already built into the system to encourage land development and homebuilding -- regardless of what kind of land is thus consumed -- the cost of the incentives to farmland protection proposed here is likely to be rather small. The deductibility of mortgage interest on principal residence purchases alone -- a tax incentive to homebuilding and, regretably, to unnecessary farmland conversion -- costs the federal treasury millions, if not billions, of dollars annually. Of course, we would not propose the elimination of this federal tax incentive, but we do believe that it is time to provide some kind of marketplace counterbalance, focused on those agricultural lands that should be conserved for food production.

In the final analysis, the question is not "Can we afford to conserve our prime agricultural lands?" It is "Can we afford not to?"

Mr. **Reilly**. Thank you. Mr. George Horkan, attorney at law.

STATEMENT OF GEORGE A. HORKAN, JR., ATTORNEY AT LAW

Mr. **Horkan**. I am a lawyer who has been in private practice for more than 20 years, in Loudon and Fauquier Counties, Va. My comments on the tax incentive concept paper are limited to my experience in representing 35 landowners who donated 49 open-space easements to the Virginia Outdoors Foundation during the 7-year period from 1974 to 1980. Most of these easements totaling 11,747 acres were on land located in the historic Piedmont Valley of Virginia, between the Bull Run Mountains and the Blue Ridge, approximately 50 miles west of Washington, D.C. This is still primarily an area of beautiful farms and villages, including Upperville and Waterford, both of which are on the National and Virginia Registers of Historic Places. The area was known as Mosby's Confederacy during the Civil War and was delineated a critical environmental area in a comprehensive study made in 1972 under the auspices of the General Assembly of the Commonwealth of Virginia.

The landowners with whom I associated during this period were motivated to donate open space easements on their property for two primary reasons. First, such landowners were becoming aware that planning and zoning at the county level was failing to protect the historic and open-space character of the Piedmont Valley, and more effective conservation measures were necessary to preserve the unique quality of the area for future generations. Second, the prospect of an income tax deduction on the appraised value of easements donated to the Virginia Outdoors Foundation was economically attractive to most landowners. The relative impact of these two motives varied from person to person. My experience has shown that both motives must be present in order for a landowner to make a decision to donate an open-space easement limiting the use of the land to agricultural and forest purposes, and significantly limiting future subdivision of the land in perpetuity.

The donations of open space easements in Virginia, as briefly outlined above, was gaining momentum as a major land conservation program when two developments occurred on the national scene in 1980 which brought the program to an abrupt halt with approximately 10,000 acres in proposed open-space easements in the pipeline on a statewide basis. These developments were the enactment of certain provisions of the Tax Treatment Extension Act of 1980 and the growing awareness among taxpayers and their advisers of the inconsistencies and delays in the audit procedures being applied by the Internal Revenue Service on income tax returns reporting donations of open space easements.

The first reason for such halt is effectively set forth in the tax incentive concept paper before this committee commencing on page 5 under the heading, "Identification of Governmental Conservation Programs." The language in section 170(h)(4)(A)(iii)(II) of the 1980 act requiring that the preservation of open space, including farmland and forestland, be pursuant to a clearly delineated Federal, State, or local government conservation policy, and will yield a significant public benefit, is so broad and imprecise that practicing attorneys can no longer advise donors of open-space easements as to the deductibility of a proposed easement for income tax purposes.

What is a clearly delineated governmental conservation policy? How do you determine if an easement will yield a significant public benefit? If an easement is held not to qualify as a contribution deduction under section 170, will the donor be liable for a gift tax on the appraised value? If the Internal Revenue Service is going to answer such questions on a case-by-case basis, the uncertainty will be unacceptable to taxpayers and their advisers.

The Maryland Environmental Trust, which I understand has encountered many of the same problems that we have in Virginia, has recommended an amendment to this section of the Internal Revenue Code which we support and recommend be adopted. We urged similar language on the responsible committees of Congress during the hearings on the adoption of the 1980 act, and now again urge such section be amended by striking out the phrase, "and will yield a significant public benefit, or" and inserting in lieu thereof, the following: "and will yield a significant public benefit provided that, as nonexclusive means for satisfying this requirement, the contribution shall be deemed to yield a significant public benefit if, one, the donee is a Federal, State, or local government unit which is empowered and agrees to accept and enforce such contribution, or two the officials responsible for implementing a clearly delineated Federal, State, or local conservation policy certify to the Secretary that such contribution will yield a significant public benefit, or."

I didn't realize I would be limited to 5 minutes. The second point I had to raise was the uncertainty and delays in the audit procedure by the Internal Revenue Service. Of the 49 open-space easements with which I am associated 13 are under audit. Only five had a deficiency notice issued, although they date back as far as 1975. The pattern for selecting appraisals for audit appears to be on a case-by-case basis wherein the predilections of individual revenue agents appear controlling. Such pattern of random selection compares unfavorably with the systematic appraisal procedures followed by most taxpayers in the 49 cases mentioned above. With few exceptions, the appraisals were prepared by the same two highly qualified and experienced appraisers. Both have recognized that appraisals on all easements in a given area must be interrelated based upon a rigorous application of factors affecting value, including road frontage, topography, drainage, soil quality, and susceptibility to development.

The inconsistency of the Internal Revenue audit procedure is demonstrated by the experience of three individuals in the Piedmont Valley who purchased nearly 1,000 acres of land in a critical environmental area threatened with inappropriate development. After several years, the owners donated an open-space easement on the land limiting future subdivision into tracts of not less than 100 acres. All three owners were routinely audited by different revenue agents. In two audits, the appraisal on the value of the easement was accepted as filed. On the third audit, the identical appraisal was not accepted by the revenue agent concerned. The audit of the appraisal on one of the other two owners upon which the 3-year statute of limitations had been waived was therefore reopened after having been initially accepted. Two of the cases are still pending before the IRS. I have a number of other examples, but I will conclude by saying that, irrespective of other issues, the uncertainty and delay in the Internal Revenue Service audit procedures on the appraisals of open-space easements now makes it difficult to advise a client that he is safe to proceed with the proposed donation of such an easement.

If you cannot advise a landowner whether or not his appraisal will be accepted on any consistent process of valuation, and if you must advise him that the process will take 5 years, it is most unlikely that the donation will be made, particularly when the interest rates on deficiencies are now running at 20 percent per annum.

[The prepared statement of Mr. Horkan follows:]

SENATE PUBLIC LANDS SUBCOMMITTEE WORKSHOP ON LAND PROTECTION AND MANAGEMENT

STATEMENT BY G. A. HORKAN, JR., ATTORNEY ON TAX INCENTIVE CONCEPT PAPER

I am G. A. Horkan, Jr., an attorney in private practice for more than twenty years in Loudoun and Fauquier Counties, Virginia. I am counsel to the Piedmont Environmental Council, The Bull Run Conservancy and to the Virginia Outdoors Foundation on its conservation activities in my area of the State. I have served on the Loudoun County Planning Commission and on the Northern Virginia Regional Planning Commission.

My comments on the Tax Incentive Concept Paper are limited to my experience in representing 35 land owners who donated 49 open-space easements to the Virginia Outdoors Foundation during the seven year period from 1974 to 1980. Most of these easements, totalling 11,747 acres, were on land located in the historic Piedmont Valley of Virginia between the Bull Run Mountains and the Blue Ridge, approximately 50 miles west of Washington, D.C. This is still primarily an area of beautiful farms and villages including Upperville and Waterford, both of which are on the National and Virginia Registers of Historic Places. The area was known as Mosby's Confederacy during the Civil War and was delineated a critical environmental area in a comprehensive study made in 1972 under the auspices of the General Assembly of the Commonwealth of Virginia.

The land owners with whom I associated during this period were motivated to donate open-space easements on their property for two primary reasons. First, such land owners were becoming aware that planning and zoning at the county levels was failing to protect the historic and open-space character of the Piedmont Valley and that more effective conservation measures were necessary to preserve the unique qualities of the area for future generations. Second, the prospects of an income tax deduction on the appraised value of easements donated to the Virginia Outdoors Foundation was economically attractive to most land owners. The relative impact of these two motives varied from person to person but in my experience both motives must be present in order for a land owner to make an irrevocable decision to donate an open-space easement limiting the use of the land to agricultural and forestal purposes and significantly limiting future subdivision of the land in perpetuity.

The conservation organizations with which I am associated in Virginia favor donations of open-space easements to the Virginia Outdoors Foundation as the agency created by statute by the Commonwealth of Virginia to protect the open space character of critical environmental areas as identified in various parts of the State. Further, the Attorney General of Virginia reviews each easement for legal sufficiency prior to its being recorded and is thereafter responsible for the legal enforcement of the terms and conditions of each easement donated to the Virginia Outdoors Foundation, an agency of the State. The State enabling legislation also directs that real estate tax assessments reflect any change in the market value of property resulting from the donation of easements to a qualified public body. In our experience, the Virginia Outdoors Foundation has been responsible in accepting donations of open-space easements requiring not only conformity to State identified critical environmental areas but also consistency with local comprehensive plans.

The donation of open-space easements in Virginia as briefly outlined above was gaining momentum as a major land conservation program when two developments occurred on the national scene in 1980 which brought the program to an abrupt halt with approximately 10,000 acres in proposed open-space easements in the pipeline on a statewide basis. These developments were the enactment of the Tax Treatment Extension Act of 1980 and the growing awareness among taxpayers and their advisers on the inconsistencies and delays in the audit procedures being applied by the Internal Revenue Service on income tax returns reporting donations of open-space easements.

The first reason for such halt is effectively set forth in the Tax Incentive Concept Paper before this Committee commencing on page 5 under the heading "Identification of Governmental Conservation Programs". The language in Section 170(h)(4)(A)(iii)(II) of the 1980 Act requiring that "the preservation of open-space (including farm land and forest land) be pursuant to a clearly delineated Federal, State or local government conservation policy, and will yield a signficant public benefit," is so broad and imprecise that practicing attorneys can no longer advise would be donors of open-space easements as to the deductibility of a proposed easement for income tax purposes. What is a clearly delineated governmental conservation policy? How do you determine if an easement will yield a significant public benefit? If an easement is held not to qualify as a contribution deduction under Section 170 of the Code, will the donor then be liable for a gift tax on the appraised value of the easement? If the Internal Revenue Service is going to answer such questions on a case by case basis, the uncertainty will be unacceptable to taxpayers and their advisers. In the past 18 months, I have reluctantly advised many land owners to forego any plans to donate open space easements until the uncertainties under the 1980 Act are resolved by the publication of long delayed regulations or by clarifying amendments to the Act.

With all its pressing priorities, the Internal Revenue Service lacks the manpower and expertise to apply the definition of conservation purposes required under the 1980 Act. Such limitations on the resources and capacities of the Internal Revenue Service apply as much to requests for private rulings as in connection with case by case audits. As the Concept

Paper recommends, the responsibility for applying conservation definitions under the Act should be made by the Federal, State and local agencies responsible for implementing conservation programs in their respective jurisdictions.

The Maryland Environmental Trust, which I understand has encountered many of the same problems that we have in Virginia, has proposed an amendment to Section 170(h)(4)(A)(iii)(II) of the Internal Revenue Code which we support and recommend be adopted. We had urged similar language on the responsible committees of Congress during the hearings on the adoption of the 1980 Act and now again urge that said Section be amended by striking out the phrase "and will yield a significant public benefit, or" and inserting in lieu thereof the following:

> "and will yield a significant public benefit, provided that, as non-exclusive means for satisfying this requirement, the contribution shall be deemed to yield a significant public benefit if (1) the donee is a Federal, State or local governmental unit which is empowered and agrees to accept and enforce such contribution, or (2) the officials responsible for implementing a clearly delineated Federal, State or local conservation policy certify to the Secretary that such contribution will yield a significant public benefit, or".

The second reason for the virtual halt in the donations of open-space easements in Virginia in the past eighteen months, i.e. the growing awareness of inconsistencies and delays in the Internal Revenue Service audit procedures, is discussed to some extent at pages 26 and 27 of the Concept Paper. In particular, the Concept Paper sets forth sound principles that should be followed in the valuation of qualified conservation contributions. However, the adverse effect of present Internal Revenue Service audit procedures on prospective donors of open-space easements is not discussed nor generally recognized except by taxpayers and their advisers directly impacted by notice of a deficiency assessment.

Of the 49 open-space easements donated to the Virginia Outdoors Foundation with which I have been associated, I know of 13 that have been selected for audit. There may be others of which I am not aware. All easements selected for audit predate the 1980 Act and most date back to 1977. As far as we have been able to determine, the Internal Revenue Service now accepts each of the 13 easements to be a qualified conservation contribution under Section 170 of the Code but the appraised values of the easements for purposes of the contribution deduction are in dispute.

The Internal Revenue Service pattern for selecting such appraisals for audit appears to be on a case by case base wherein the predilections of individual revenue agents appear controlling. Such pattern of random selection compares unfavorably with the systematic appraisal procedures followed by most taxpayers in the 49 cases mentioned above. With few exceptions the appraisals were prepared by the same two highly qualified and experienced appraisers who recognize that appraisals on all easements in a given area must be interrelated based upon a rigorous application of factors affecting value including road frontage, topography, drainage, soil quality and susceptibility to development. The inconsistency of the Internal Revenue Service audit selection procedure is vividly demonstrated by the experience of three individuals in the Piedmont Valley who purchased nearly 1,000 acres of land in a critical environmental area threatened with inappropriate development. After several years, the owners donated an open-space easement on the land limiting future subdivision into tracts of not less than 100 acres. All three owners were routinely audited by different revenue agents. In two audits, the appraisal on the value of the easement was accepted as filed and on the third audit the identical appraisal was not accepted by the revenue agent concerned. The audit of the appraisal on one of the other two owners upon which the three year statute of limitations had been waived was thereafter reopened after having been initially accepted. Two of the cases are still being processed by the Internal Revenue Service.

In disputing the appraised values on easements in our area of Virginia, the Internal Revenue Service also appears to be ignoring the actions of other government agencies, particularly the National Park Service and the U. S. Forestry Service, in purchasing open-space easements at significantly higher prices than the appraised values on comparable easements being donated to the Virginia Outdoors Foundation. Copies of appraisals we have received from other government agencies indicate that on occasions such other

Federal agencies have paid twice as much to purchase an open-space easement as the appraised values on comparable easements being donated in Virginia. This inconsistency in the actions of various Federal agencies is further aggravated when the Internal Revenue Service thereafter seeks to further reduce the appraised values on donated easements.

Equally as troublesome to taxpayers as the inconsistency in the audit selection and valuation process is the long delay now occuring in the Internal Revenue Service processing of audits on open-space easements. The usual procedure when an appraisal is disputed by a revenue agent is the referral of the appraisal to the Internal Revenue Service, Office of Engineering and Valuation, in Philadelphia where such appraisals now languish from 18 to 24 months before a Valuation Report from such office is made available to the revenue agent. As previously mentioned, all of the audits on appraisals with which I am familiar predate the 1980 Act and one dates back to 1975 and the most recent dates back to 1979. Only five deficiency notices have been issued to the taxpayers in these cases with eight such notices still pending but not issued. Until such a deficiency notice is issued, the taxpayer cannot appeal to the Appellate Conferee level in an effort to settle the case before going to the Tax Court. Such delays are obviously troublesome to taxpayers who need some certainty in their personal affairs. With the interest rate on Internal Revenue deficiency assessments now running at 20% per annum, a five year delay in settling an audit on the appraised value of an open-space easement will double the final deficiency and certainly compromise the willingness of the taxpayer to reach a negotiated settlement of the issue at the Appellate level.

Irrespective of other issues, the uncertainty and delay in the Internal Revenue Service audit procedures on the appraisals of open-space easements now makes it difficult to advise a client that he is safe to proceed with a proposed donation of such an easement. If you cannot advise a land owner whether or not his appraisal will be accepted on any consistent process of valuation, and if you must advise him that the process may take five years, it is most unlikely that the donation will be made. The valuation of open-space easements can be demanding as there are few comparable sales upon which to base such appraisals but some means must be found to restore speed and relative consistency to the process. It may be that the Internal Revenue Service should retain highly qualified appraisal firms in various areas of the country to act on its behalf in appraising open-space easements on an expedited and consistent basis. If this roadblock in the Internal Revenue Service on the audit of open-space easements is not removed, further amendments to the 1980 Act will be of little value in reactivitating the open-space easement program in my part of Virginia.

In conclusion, as a practicing attorney in the field of land use planning, my experience indicates that soundly conceived and administered open-space easemdnt programs such as we had in Virginia prior to 1980, are one of the most effective means of preserving critical environmental areas in perpetuity at minimum expense to goverment at all levels. I urge this Committee to proceed with clarifying amendments to the 1980 Act and with recommendations to the Internal Revenue Service to improve audit procedures on appraisals of open-space easements.

Respectfully submitted,

G. A. Horkan, Jr.

Mr. **Reilly**. I want you to know you used 6 minutes, not 5. It is 6 for respondents. We are sorry it has to be so tight, but we still have a full afternoon.

Let me move to Mr. William Hutton of the Trust for Public Land.

STATEMENT OF WILLIAM T. HUTTON, TRUST FOR PUBLIC LAND

Mr. **Hutton**. It is a pleasure to be here. I want to clarify the introduction slightly. I am an academic from San Francisco, and I am here thanks to the Trust for Public Land, which is the sponsor of this appearance. I have consulted rather widely with the TPL and other tax-exempt organizations in the conservation area.

I would like to look down the road at the prospects for realistic tax legislation, but before I do that, let me preface that by suggesting what I think realistic tax legislation ought to be.

First, it should be sensible. It should be limited to and discreet in its objectives so that it achieves precisely the preservation or conservation we are attempting to achieve and no more.

Second, it should be equitable; that is, it should apply or offer the same or similar incentives to people in similar circumstances.

Third—to restate a word that has been previously overused—it should be cost effective. Let me spend 1 minute or 2 on a critique of the proposed capital gains forgiveness based on those criteria.

It seems to me that the proposal to forgive capital gains taxation on those grounds fails on all counts. The problem is that we have to recognize tax forgiveness as a premium price. Let me give an example. If a landowner has property worth $100, a sale of it would produce a $100 gain. Capital gains tax is now running at a maximum of 20 percent after the 1981 act. If we forgive capital gains, the donor or now seller has a prospect of $100. If we don't forgive capital gains, the realization is $80 after tax, and that is the perspective we have historically been operating on. That is, in seeking donations of property we attempt to compare the after-tax benefit of a donation or a bargaining sale with what could be produced on an outright sale, and the strategy, the negotiation strategy, has been to attempt to narrow or eliminate that gap.

Until the 1981 act, it was possible to come very close, in some rare cases actually to achieve the same benefit for an outright gift as with an outright sale. In many transactions, it was possible to achieve the same benefit by way of a bargain sale, but there was no need to consider—I don't think there is a need to consider now—the payment of a premium. It seems to me we are offering more than we need to offer. We ought to attempt to achieve parity. In a proposal like this, you have the prospect of creating a disincentive to donate.

Let's take again that same property. We will assume it may or may not qualify for tax forgiveness. It clearly qualifies for a donation or bargain sale. If the donor donates, there is a maximum tax. He gets a maximum 50-percent benefit; $50 after tax. On a bargain sale he may do better. He may creep up closer to that $80 that he could get on outright sale, but on a forgiveness proposal he has got $100. So what is he tempted to do? He is tempted to wait and see whether his property will qualify for the special premium that is paid by capital gains forgiveness. That doesn't make sense. I think it makes less sense when we consider it from a different perspective, that is, to ask if the property is vital to conservation purposes.

If it ought to be preserved, the Government has the power of eminent domain. The Government can condemn that property, pay $100, and at that point the donor has the $100 with the possibility of reinvestment to avoid capital gains tax or the payment of capital gains taxes of $20 which, of course, is historically lower. It seems to me that is the way we ought to look at all legislation.

There is another way to look at this. Let's take the property which is urban property and has no conservation value, but is located next to a major urban hospital which needs it for expansion. We have to ask what are the equities in allowing conservation property to qualify for a Government premium and not allowing that same property contributed to the hospital or educational organization or what have you not to qualify for that premium? You see, you open the door, and the parallel or the analog that is offered in support of the legislation that is based upon the ability of the taxpayer 55 years old to sell one time is simply not appropriate. That is a social welfare measure that applies across the board. It isn't directed at a target property such as we are concerned with in the environmental area.

Let me look ahead if I may. I prepared a lengthy statement which I would like to have put in the record in which I have a half dozen or so proposals that I think are discrete and manageable, and which might make a sensible tax package. I want to highlight those.

First of all, the problem of dealer property—thousands of properties are simply out of the conservation marketplace, that is, for donations or bargain sales, because their sale would not yield capital gains. A hypothetical sale would not yield capital gains. That is those properties held by what we call dealers—they may be corporate dealers—are not susceptible to donation because the donation is limited to the cost of the property as the basis of it. It comes back to my $100. If the cost of that property to the farmer or developer is only $10 and that person is in the business of holding real estate for sale to customers, in the ordinary course, the donation of that property is limit to $10. That is not an easy test to apply, so we have this situation where if there is any doubt as to whether one may or may not be a dealer, the property donation simply doesn't happen.

The reason for no transaction, to go back to the 1969 act, was that under a higher marginal rate structure, it was possible for the dealers and real estate artists or the dealers in personal property to actually make money by giving property, and it was to end this abuse that Congress took a rather drastic approach to limit the deduction to basis. Well, in 1981 the rate went down. The rates are now 50 percent. It is no longer possible to make money by giving property away. It can't be done. The dealer who has zero basis property will get 50 cents on the dollar by way of a charitable contribution, and he will pay 50 cents of tax if he makes a sale. That is the most extreme of cases. You have parity between donation and sale. It is time to re-examine the dealer rule at least as pertaining to gifts of real estate where the gift is going to further the exempt purposes of the charitable donee or Government entity.

Closely related to that is the rule that limits capital gain property contributions to 30 percent of adjusted gross income. My time is up. That, too, I believe should be repealed. Let me sum up in one sentence. There are a lot of things that happened on account of the 1981 act, things that weren't considered, serious reductions of incentives from the charitable arena. If we can now go back and reconsider the whole charitable contribution structure in light of the rate changes, I think we will come out far ahead, farther ahead than considering dramatic new tax forgiveness or other similar incentives.

[The prepared statement of Mr. Hutton follows:]

THE TRUST FOR PUBLIC LAND

Senate Public Lands Subcommittee
Workshop on Land Protection and Management

PROPOSED TAX LEGISLATION: CONSERVATION INCENTIVES

Prepared for The Trust for Public Land by
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Over the past quarter century governmental policies have strongly favored the conservation of natural resources and the preservation of historically significant properties. Federal tax incentives, state statutes authorizing property tax relief for non-intensive uses, and county and municipal land-use measures to preserve open spaces provide ample evidence of public sensitivity to environmental values. Governmental acquisitions and indirect public support through tax benefits have preserved millions of acres of natural lands and thousands of historic treasures.

In the wake of the Economic Recovery Tax Act of 1981, however, the perception grows that certain charitable deduction provisions of the Internal Revenue Code deserve re-examination. Although the 1981 legislation made only minor direct changes in those provisions, the indirect effects of across-the-board rate reductions threaten to reduce the attractiveness of many modes of giving which have contributed to the strength and vitality of the environmental movement in recent years. It is the purpose of this memorandum to discuss the apparent impact of the 1981 Act on charitable giving, and to offer several specific proposals intended to restore charitable incentives and to facilitate acquisitions of land and historic properties for public purposes.

1. Contributions of Appreciated Property: The "Dealer" Problem

The Tax Reform Act of 1969 introduced massive changes in the income tax treatment of charitable contributions under Section 170 of the Internal Revenue Code ("IRC §"). The amendments made by that legislation were intended, in part, to eliminate situations in which donation had become more profitable than sale. Prior to the 1969 Act, for example, a dealer in personal property or a professional artist, subject to a 70% marginal income tax rate, might have found a donation of property to be irresistible--producing 70 cents of tax benefit for each dollar of deduction, versus as little as 30 cents of after-tax profit on a sale.

A simple mechanism was adopted by Congress to remedy this perceived abuse. Section 170(e)(1)(A) requires a reduction of any contribution attributable to appreciated property to the extent that the gain realized on a hypothetical sale would not be long-term capital gain. Thus the investor, possessed of appreciated capital gain property, may still achieve a full fair market value deduction, but the manufacturer or retailer is limited to a deduction equal to adjusted basis (ordinarily, the amount at which the property is carried for inventory purposes), and the artist's deduction is limited to the cost of canvas and paint. The effect of this mechanism has been, not merely to discourage deductions of ordinary-income property, but effectively to bar them, since it is nearly always more profitable to sell and then, assuming some charitable inclination, to make a gift of all or some part of the sales proceeds.

As applied to the potential gift of land, the statutory reduction rule for "dealer" property has precluded negotiations for many properties sought to be acquired for conservation purposes. Unless it is possible to proceed with assurance that a target property has not been "held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business" (IRC §1221(1)), the donation is certain to be defeated. (A similar discouragement obtains as to gifts of stock in corporations involved in real estate development, where the corporation's activities may subject the shareholders to the "collapsible corporation" treatment of IRC §341.) Until the current year, the inability of charity to compete for such properties might have been justified on a "balance of equities" theory; i.e., the injustice of allowing the dealer to profit through giving would outweigh the public benefit of permitting such gifts to be made. But after the rate changes of the 1981 Act, the reduction rule seems not only unfortunate in its frustration of charitable objectives, but capricious as well.

To illustrate the problem, assume that the taxpayer owns undeveloped real estate, purchased for $10,000 in 1960. Assume further than the taxpayer has a history of real estate activities, and that the subject property, while not improved, has nonetheless been held and used in much the same manner as other properties of the taxpayer which have been sold to customers in the course of his business. By early 1980, our taxpayer's property had risen in value to $100,000. The following table sets out the approximate after-tax returns on a sale or contribution in 1980, assuming, alternatively, that the land is (i) dealer property, or (ii) a capital asset:

1980 Transaction

		SALE		CONTRIBUTION	
(i)	Dealer property	Sales price	100,000	Gift	100,000
		Ordinary income	90,000		
		Tax (at 70%)	63,000	Allowable deduction	10,000
		After-tax proceeds	37,000	Tax benefit	7,000
(ii)	Capital asset	Sales price	100,000	Gift	100,000
		Long-term gain	90,000		
		Tax (at 28%)	25,200	Allowable deduction	100,000
		After-tax proceeds	78,400	Tax benefit	70,000

Now let us move the date of disposition forward two years, to 1982, and compare the same alternatives:

1982 Transaction

		SALE		CONTRIBUTION	
(i)	Dealer property	Sales price	100,000	Gift	100,000
		Ordinary income	90,000		
		Tax (at 50%)	45,000	Allowable deduction	10,000
		After-tax proceeds	55,000	Tax benefit	5,000
(ii)	Capital asset	Sales price	100,000	Gift	100,000
		Long-term gain	90,000		
		Tax (at 20%)	18,000	Allowable deduction	100,000
		After-tax proceeds	82,000	Tax benefit	50,000

These comparisons reveal, as to the 1980 transactions, that the "dealer property" question determined the feasibility of the gift. Under the 1980 rate structure, were the donation of dealer property to have been permitted at full value, a contribution would have been considerably more beneficial than a sale, producing tax benefits of $70,000, and it was precisely this unwarranted aggrandizement that Section 170(e)(1)(A) was enacted to prevent. If the dealer-property hurdle could have been cleared in 1980, the donation of this highly appreciated property would have been nearly as beneficial as a sale; indeed, once transaction costs and state income taxes were factored into the computation, the after-tax return on a donation might actually have exceeded the proceeds obtainable on an outright sale.

Looking to the 1982 comparisons, two dramatic differences emerge. First and most obvious is that the disparity of return between gift and sale of a capital asset has grown from $4,800 to $32,000--a vivid illustration of the unbridgeable gap created by the rate changes. Less striking is that the possibility for abuse by dealers, were they to be permitted fair market value deductions, has evaporated. The dealer's donation, deductible in full, would now produce tax benefits of only $50,000. (In most situations, where the basis of inventory property is more substantial as a percentage of value, the gift would be relatively less favorable than in our example). The time is ripe, then, for Congress to re-examine and to modify the reduction rule applicable to donations of ordinary-income properties.*

It is apparent that an amendment to reduce the impact of the "dealer property" rule would have the effect, not only of facilitating the acquisition of properties vital to charitable operations, but also of simplifying the charitable contribution provisions of the Code. The present statutory exceptions for certain inventory and scientific properties could be subsumed in a simpler and more general statutory rule. It is a relatively rare case when the causes of equity and simplification can be advanced without tension--as the sheer weight of the present Code so clearly demonstrates.

Recommendation: That IRC §170(e) be amended to permit deduction at fair market value for a donation of real property related to the purpose or function constituting the basis for exemption of the donee organization.

2. Capital Gain Property--The 30% Limitation

Further simplification can be achieved through elimination of the 30% limit on contributions of capital gain property. If one accepts that the 1981 Act rate changes make it less necessary to condition tax benefits on the purpose for which the taxpayer has held the donated property, then the 30% limit--a frequent barrier to full use of tax benefits from substantial gifts--no longer seems necessary or desirable. The legislative history of the 1969 Tax Reform Act indicates Congressional concern with the special dispensation long accorded gifts of appreciated property; i.e., the donor is permitted to make a donation of untaxed appreciation, and thus, in a sense, receives a "double benefit." But, in light of the significant reduction in effective capital gain tax rates, and the consequently diminished incentive to charitable giving of appreciated property, the 30% limit is no longer justified. The result of repeal of the 30% limit would be to allow deductions attributable to donations of appreciated property to organizations described in IRC §170(b)(1)(A) for up to 50% of the donor's "contribution base."

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* Congress has already seen fit, in the 1978 and 1981 Acts, to modify IRC §170(e)(1)(A) to permit certain contributions of function-related inventory and scientific equipment. See IRC §170(e)(3) and (4). Each of those exceptions pertains only to corporate contributions, and the properties permitted to be donated under those exceptions are narrowly defined.

It is often suggested, as to the problem of unused deductions on account of large contributions of capital gain property, that the present five-year carryover period of IRC §170(d) should be legislatively extended to ten years. In principle that may seem sensible, but as to gifts made in times of persisting inflation, an elongated carryover period would provide a less significant incentive than elimination of the 30% limit on gifts of capital gain property.

To illustrate the comparison, assume a donor with present and projected adjusted gross income of $100,000, and a marginal tax rate of 50%; further assume a proposed donation of property worth $300,000, in which the taxpayer's basis is $100,000. Under present law, the taxpayer could use $30,000 of charitable deduction per year, producing an aggregate tax benefit of $90,000 (aggregate deductions of $180,000 times 50% marginal rate). The present value of those tax benefits, assuming a discount rate of 10%, would be about $72,000.* If the carryover period were ten years, the taxpayer would be able fully to use the rest of his contribution ($120,000), producing tax benefits of $60,000, but, at present value, those distant carryover years' benefits would be only about $30,000. If, on the other hand, a 50% rather than the present 30% limitation applied, the taxpayer could use his entire $300,000 gift within the present six-year statutory period, producing total tax benefits, at present value, of about $120,000. (Even that aggregate benefit amounts to less than half the after-tax proceeds the taxpayer could realize on an outright sale.)

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* Under present law, the taxpayer may elect to reduce the contribution by 40% of the appreciation, in order to use the 50% limitation. IRC §170(b)(1)(C)(iii). In our example, this would reduce the contribution by $80,000 (40% of the potential $200,000 gain), but would enable the taxpayer to use the reduced contribution over a five-year period, producing tax benefits, at present value, of about $94,000.

Recommendation: That IRC §170(b)(1)(C), which provides a 30%-of-contribution-base limitation on the deduction attributable to capital gain property, and rules and definitions relating to such limitation, be repealed.

3. Corporate Contributions

The 1981 Act's doubling of the percentage limitation on corporate contributions, from 5% to 10% of taxable income, will surely encourage both cash and property donations where corporate income is substantial. But all too often, for the corporate owner of appreciated real property sought as a contribution, the deduction holds no allure, because the corporation has little or no income to reduce. In such cases, traditional tax planning involves aligning the potential deduction (the target property) with individual shareholders-taxpayers who are able to make use of the contribution.

The plan of alignment typically involves a stage-setting transaction, such as a distribution of property from the corporation to its shareholders, or, in some cases, a liquidation. Another possibility, perhaps less widely appreciated, involves a donation of stock, with the expectation (but not the legal obligation) that the donee organization will, at some future date, look kindly upon the corporation's offer to redeem that donated stock. In any given case one or more plans may yield felicitous results, but it is not uncommon to find that no acquisition proposal is considered acceptable. And even where tax benefits can be demonstrated, concern about undue complexity or the feasibility of multi-step transactions may defeat a charitable acquisition.

In order to afford greater incentive to the corporate owner of significant conservation property we might consider:

(1) "Sale" of tax benefits. By analogy to the new "safe harbor" rules for leveraged leases in IRC §168(f), one could advocate a corporate market for charitable contributions. Thus company X, a land company without taxable income, owns land with significant ecological features, worth $200,000, in which its basis is a mere $10,000. Corporation Y, with current taxable income in excess of $2,000,000, may have no charitable inclinations nor concern for X's property, but can clearly make use of charitable deductions. Under present law, there is no means by which X's charitable impulses can be translated into significant tax benefits. Were X able to "sell" its contribution deduction to Y--at a price to be determined by the maket--its beneficience could be turned to immediate profit; for example; Y would pay X $80,000 for the right to be considered the donor of appreciated capital gain property. X would realize $80,000 (less applicable capital gains tax), and Y's tax benefits ($92,000 at Federal 46% marginal rate) would provide the incentive to preserve the land.

(2) Contribution pass-throughs. An equally ambitious proposal would permit the corporate contribution to be deducted by its shareholders. To continue the example begun above, X Corporation's outright donation of land worth $200,000, productive of no benefit to that corporation on account of its dearth of taxable income, would be considered to have been made by its shareholders, or, perhaps, certain few of its shareholders.

Even leaving aside fundamental policy questions, technical objections leap readily to mind. Properly allocating the corporation's contribution among its shareholders could prove difficult. Suppose, for example, that the corporation has both preferred and common shares. Which shareholders should be deemed donors, and in what amounts? Or suppose that the corporation's stock is listed--the expense of allocation and notification of thousands of shareholders might well exceed the aggregate tax benefit produced by the deduction. And how could the corporation's board of directors approve a contribution intended to be passed through when a significant number of shareholders might receive little or no personal benefit?

Possible answers to these and similar allocation and equity problems are suggested elsewhere in the Code. Subchapter S corporations, which permit their (no more than 25) shareholders to report their respective shares of corporate income, capital gains and losses, avoid the allocation quandry by having only one class of stock. A charitable contribution pass-through could be conditioned upon similar size and capitalization requirements; it might be sensible to permit such contributions only from Subchapter S corporations, acknowledging that regular business corporations meeting the requirements for Subchapter S status could make "one shot" elections to take advantage of the pass-through as to a proposed donation of unusual size.

As for matters of equity (or, from the board member's perspective, matters of fiduciary duty), the election of benefits would seem a logical solution; each electing shareholder would receive a predetermined share of the corporate contribution and his stock basis would be reduced accordingly. (This mechanism is closely analogous to special allocations in a partnership setting, where disproportionate deductions are justified by adjustments to capital accounts.) Although only an occasional public company would likely endure the trouble and expense of offering an allocation of corporate deduction to its shareholders, the properties of public corporations are much less frequently the targets of charitable acquisitions than those of small, closely-held and family companies.

(3) Redemptions for target properties. Through gifts of stock and later redemptions, it is occasionally possible, even under present law, to achieve the functional equivalent

of a pass-through donation. In Revenue Ruling 78-197, 1978-1 C.B. 83, the Service acquiesced in a line of cases in which taxpayers successfully avoided IRS attempts to collapse the gift and redemption into a constructive dividend. Provided that the donee organization becomes a bona fide shareholder, without commitment to surrender the shares when redemption is offered, the first step--the gift of stock--will be respected as an independent event.

Where the donee expects to receive appreciated corporate property, rather than cash, such a transaction takes on added complications. In order for the corporation to escape capital gain reckoning on the appreciation in the target property at the time of redemption, the donee organization must have been a greater-than-10% shareholder for over a year. IRC §311(d)(2)(A). Thus the corporation seeking to use this technique is faced with both quantitative requirements under the statute and a psychological barrier in the form of a potentially troublesome minority shareholder.

Were it possible, under the provisions of Section 311 of the Code, for the redemption for target property to be effected with dispatch, gifts of stock would become a much more useful technique. The necessary statutory amendment would be small and uncomplicated, consisting of an addition to the list of exceptions in IRC §311(d)(2), to permit corporate nonrecognition upon a distribution in complete redemption of an exempt organization shareholder, where the distributed property bears an appropriate functional relationship to the purposes of the distributee organization.

The "immediate redemption" approach would achieve with considerable economy of statutory language the desired goals of contribution allocation and equity. The donee organization's stock ownership would result from the decision of one or more shareholders to contribute; the board of directors' only role would be to offer a redemption which, given the size of the donee's stock interest, would be in the best interests of the corporation. Such a plan appears preferable to a pass-through approach in that it would permit charitable deductions based on stock value, whereas, as noted above, an allocation of corporate contributions to shareholders might well involve limitation of the deduction to stock basis. See IRC §1374(c) (limiting shareholder's portion of Subchapter S corporation's operating loss to basis in stock and debt).

Recommendations: (i) That IRC §170 be amended to permit the deemed transfer of ownership of real property from one corporation to another in order that the transferee may be considered the donor of such property (such legislation to be patterned upon IRC §168(f)(8)).

(ii) That IRC §311(d)(2) be amended by adding to the list of exceptions therein the complete redemption of an exempt organization described in IRC §170(b)(1)(A), for real property which is related to the purpose or function constituting the basis for exemption of the distributee.

4. Easements as "Like Kind" Property

Donations of conservation easements, sanctioned under the rules of IRC §170(h), enacted in December of 1980, promise to become of increasing significance. The appeal of such donations is limited, however, to those whose economic circumstances permit them to enjoy the financial rewards of charity. It is an unenviable task to describe the joys of easement giving to farmers and ranchers whose principal occupational satisfactions are psychic. We should consider, then, broadening present incentives, so that dispositions of conservation easements may be considered by landowners of modest means.

There are undoubtedly several ways to approach this problem, but one of the simplest, and perhaps most efficacious, would be to expand the definition of "like kind" property in IRC §1031, so as to permit exchange of a conservation easement for another interest in real property. As a practical matter, such a disposition would always involve either a qualified conservation organization or a government entity; no doubt, in light of experience with the 1980 easement legislation, the Treasury would reasonably demand specific limitation to those organizations described in IRC §170(h)(3).

To take a hypothetical case, suppose that an exempt land trust seeks to acquire an easement protective of a large agricultural property, with undeniable scenic and ecological attributes, whose owner is anxious to see the property remain in agricultural production, but has little taxable income. Competent appraisal has established the value of an easement carrying development and other rights not essential to agricultural uses at $200,000--50% of fair market value.

Under present law, the exempt organization could purchase the easement, although this is a remote possibility indeed. In the alternative, it could seek to attract a gift of property to trade for the easement, which has the advantage of allowing it to look beyond the owner of the target property for a contribution. (Were a governmental entity to seek the easement, it might offer surplus undeveloped land.) Even if such a trade were possible to arrange, it would probably result in a taxable capital gain to the extent the value of the property received exceeds that portion of the landowner's basis allocated to the easement.

From the landowner's perspective, the tax-free swap of an easement for income-producing property, with no incursions on present agricultural uses, would be an exceedingly straightforward, and perhaps irresistible, proposal. It is possible that such an exchange would qualify for nonrecognition under present law, although there is scant precedent. Considerable doubt centers upon IRC §1031(a)'s requirement that both the property exchanged and the replacement property be "held for productive use in trade or business or for investment." While a conservation easement may carry with it aspects of investment utility (for example, the transferor might allege that farmland had been used for business but also held for its ultimate subdivision potential), the persistence of historical uses might make it difficult to demonstrate that the exchanged property carried sufficient business or investment genes.*

Recommendation: That Section 1031 of the Internal Revenue Code be amended to permit nonrecognition of gain upon the exchange of--

(i) property described in §170(h)(2)(C),

(ii) to an organization described in §170(h)(3),

(iii) for a purpose described in §170(h)(4)(A), for property of like kind (i.e., real property) to be held either for productive use in trade or business or for investment.

5. Donations of Easements and Retained Mineral Interests

In creating the statutory maze of IRC §170(h), Congress intended to permit contributions of fee interests in property subject to retained mineral interests, where conservation purposes are adequately protected, and to sanction donations of conservation easements. The legislative history of that provision fails to indicate that any thought was given to a conjunction of those intentions; i.e., the gift of a conservation easement subject to explicit retention of mineral rights. Over the past year and a half, while we have awaited the issuance of proposed regulations, it has become apparent that the uncertainty of result in such a transaction has delayed or defeated numerous easement acquisitions.

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* The Internal Revenue Service has privately ruled that the transfer of development rights constitutes an extinguishment of those rights, not an exchange. Ltr. Rul. 8141112.

No sound policy reason can be offered to deny a deduction for a conservation easement over property which might be subject to mineral exploitation, provided that the means of such exploitation is consistent with the protection of conservation values. It must be acknowledged, however, that the statute is far from clear, and one could reasonably construe IRC §170(h)(2) to preclude retention of mineral interests save where "the entire interest of the donor" other than such interest is donated. (The statute also indicates, however, in IRC §170(h)(5)(B), referring to "a contribution of any interest where there is retention of a qualified mineral interest," that Congress may indeed have intended to approve the conjunction of an easement donation with retained mineral rights.)

In view of the gravity and immediacy of this problem, and barring an early favorable resolution by regulation, a statutory remedy is essential.

Recommendation: That Section 170(h) be amended, by adding a sentence to paragraph (2) thereof, to provide as follows: "The donor may retain a qualified mineral interest in any property subject to a contribution described in subparagraph (B) or (C)."

6. "Qualified Conservation Contributions": The "Coupling" Problem

In order for a donor's gift of less than his entire interest in property to qualify for an income, gift, or estate estate tax deduction, it must fall within one of three categories of exception to the "partial interest" rule of IRC §170(f)(3)(A). The exceptions cover (i) a contribution of a remainder interest in a personal residence or farm, (ii) a contribution of an undivided portion of the taxpayer's entire interest in property and (iii) a "qualified conservation contribution." The former two categories date from the Tax Reform Act of 1969; Congress added the third, with attendant definitional requirements, in 1980. IRC §170(f)(3)(B), (h).

Estate and gift tax deductions are conditioned upon the same requirements; IRC §§2055(e)(2) and 2522(c)(2) simply incorporate the income tax exceptions by reference. Thus, a transfer by bequest of a conservation easement will qualify as a deduction for estate tax purposes only if the transfer meets the requirements of §170(h).

Given the complexity of §170(h), which requires the donor to determine, among other requirements, the appropriateness of the conservation purpose to be served by the grant, use of the same tests for determining gift and estate tax deductibility as for income tax benefits seems inappropriate. To take a perfectly conceivable situation, suppose that the taxpayer makes an inter vivos transfer of a conservation easement designed to protect a property believed to have significant scenic attributes. Under the statute, income tax deductibility will turn, in part, upon a determination of the property's scenic qualities; see IRC §170(h)(4)(A)(iii)(I). Should it ultimately be determined, under regulations not yet promulgated or otherwise, that the donation fails, not only will the gift produce no income tax benefits, but will apparently be subject to gift tax. And similarly, where the easement donation is by bequest, the executor's inability to prove sufficient scenic value would subject an irrevocable transfer of an easement to a public charity or a governmental entity to estate tax.

The best that can be said for this unfortunate "coupling" of requirements for income and estate/gift tax purposes is that it furnishes a powerful inducement to ascertain the propriety of a "qualified conservation contribution." But whatever its inspiration towards careful planning, the present statute is likely to frustrate any easement donation as to which there is a scintilla of doubt about qualification, for fear of a gift or estate tax "penalty." Conservation organizations already report the paralysis of easement transactions where prospective donors are moved by the carrot (the income tax deduction) but fearful of the stick (gift tax liability).

The solution to this problem seems relatively simple, and need only involve the uncoupling of a single requirement pertaining to qualified conservation contributions.* The problem stems from the uncertain scope of "conservation purpose," as defined in IRC §170(h)(4)(A). It is suggested, therefore, that for estate and gift tax purposes, contributions which fail to meet the requirements of the statute solely on account of failure to satisfy that subparagraph not be subject to gift or estate tax. Thus, for example, an inter vivos contribution of a "qualified real property interest," to a public charity or governmental entity, which failed to meet the conservation purpose test of IRC §170(h)(4)(A) would yield no income tax deduction, but would not subject the transferor to gift tax liability. If, however, the donated property were not a "qualified real property interest," or were made to an organization not described in IRC §170(h)(3), gift tax liability would attach. Adoption of this uncoupling suggestion could not be productive of abuse, since gift or estate tax forgiveness would be conditioned upon an irrevocable and perpetual transfer of property.

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*It is not suggested here that contributions of remainder interests in personal residences or farms or contributions of undivided interests should be uncoupled; there is ordinarily no difficulty in determining that such contributions qualify under the statute and regulations.

Recommendation: That IRC §§2055(e)(2) and 2522(c)(2) be amended to eliminate the reference to, and requirement of, a "conservation purpose" as a requisite to estate and gift tax deductibility for "qualified conservation contributions."

7. Estate and Gift Taxes: Negotiated Credits

It has been widely suggested that the allowance of credits against estate taxes for transfers of significant conservation properties to the Federal government would avoid forced sales of those properties to pay estate taxes. From the conservationist's perspective, however, allowing an executor to pay estate taxes with ecologically significant land or an historic property would not necessarily provide a useful planning device. Unless the executor were explicity directed by will to make the transfer, preservation of the property would depend upon market conditions, the government's willingness to meet, through the tax credit, the prevailing market price, and the willingness of beneficiaries to accede to a transfer of the property into public ownership. It seems quite likely, then, that such a credit would be looked upon as an occasional, last-resort opportunity.

In order for the estate tax credit to provide a meaningful incentive, it is essential that the landowner be assured, prior to death, that a credit of determinable amount will be granted. In return for such a "guaranteed" credit, the landowner would commit to cause the property to be transferred, either immediately, or following his death. Were the transfer not to take place immediately, the agreement would provide adequate safeguards to ensure that its natural or historic attributes were preserved.

Not the least of objections to such a credit is sensibly grounded in distaste for its complications, but the basic policy--which might well be viewed as an option to trade a charitable contribution deduction for an estate tax credit--seems sufficiently promising as to justify consideration. The principal attributes of the credit mechanism would appear to be as follows:

a. Certification. Qualification of the subject property for the credit would be determined by the Secretary of the Interior or Agriculture, pursuant to guidelines established by those Departments. Although the Internal Revenue Code provision sanctioning the credit should not attempt to define qualifying "target" properties (other than perhaps, by reference to certain broad categories of property), the legislative history might well provide examples of situations intended to be covered; for example, in-holdings in National Forests or Seashores and properties listed in the National Register. (Precedent for a certification procedure is found in the investment credit provisions applicable to the rehabilitation of historic properties; see IRC §48(g)(3).) Since all transfers qualifying for the credit would be accomplished by contractual agreement, the enabling legislation should give the Secretary of the Interior or Agriculture considerable discretion to negotiate for properties deemed to be of environmental, cultural, scenic, recreational or historic importance.

b. Value. The compelling attraction of the negotiated estate tax credit lies in its guarantee of a determinable price, to be paid by way of a credit against estate taxes. In a typical situation, the owner possessed of open space land which bulks large in his estate faces a significant probability that such land will be sold to meet estate tax obligations or to provide liquidity to meet other estate planning objectives. As the present real estate market so vividly illustrates, however, unpredictable and uncontrollable factors may thwart the executor's ability to dispose of the property in such a way as to effectuate the decedent's objectives. The guaranteed credit may thus provide an alluring escape from uncertainty.

It is not intended that the credit, to be established pursuant to appraisal and negotiation, would be limited to transfers in fee, nor to transfers which become effective only upon the death of the landowner. Protection of National Park buffer properties, for example, could be achieved in many cases by the transfer of a perpetual conservation easement; the owner who negotiated such a transfer in consideration of future estate tax credit would choose that procedure over the "qualified conservation (income or estate tax) contribution" described in IRC §170(h). Whether or not the transfer takes place prior to death, the landowner should be entitled to an "interest factor" to take account of presumed appreciation from the time the credit is negotiated until the time of death.

c. Protection of the subject property must be assured where the landowner retains possession subsequent to the execution of the credit agreement. As to property to be transferred in fee after death, interim protection would be achieved by the grant of a conservation easement, but such grant would produce no charitable contribution deduction--the estate tax credit would represent consideration for the easement and the future transfer of the fee. When the agreement results in a present (lifetime) transfer of the landowner's entire interest in return for the future estate tax credit, interim protection is of course unnecessary.

d. Refundability. The Economic Recovery Tax Act of 1981 increased the unified credit against estate tax from $47,000, in phases, to $192,800 for decedents dying in 1987 and thereafter. Ultimately the unified credit will protect a taxable estate of up to $600,000. It is vital to consider, then, as to the estate tax credit for conservation transfers proposed here, whether the credit ought to be refundable.

For example, suppose the landowner's taxable estate is expected to be $750,000, producing a tentative tax of $248,300, subject to a credit of $192,800. In that prospective estate is a conservation property, valued for purposes of the conservation credit at $300,000. Should the donor be entitled merely to elimination of his estate tax liability ($55,500), or to elimination of the estate tax and a refund of the difference between the tax liability (computed without the credit) and the agreed fair market value of the conservation property?

If the credit is not refundable, or at least partly refundable, the mechanism will, in practical effect, be useful only in respect of estates in which the target properties would otherwise be fully taxable. In order to allow the Government to negotiate for properties held by persons of modest means, for whom the attractions of current income tax deductions are minimal or nonexistent, the credit should be refundable.

It can fairly be observed that any proposed estate tax credit for conservation transfers is a thinly disguised acquisitions program, and that it would be equally feasible for the Government to acquire, for negotiated value, present or future interests in the kinds of property sought to be protected by the negotiated credit. The advantage of the credit, however, lies in its preemption of future appropriations questions; except as to the refundable portion, if any, Government acquisitions would be funded out of estate taxes otherwise owing. And it is difficult to conceive of the aggregate of refundable credits for negotiated conservation acquisitions becoming a significant budgetary item.

Recommendation: That the estate and gift tax provisions of the Internal Revenue Code be amended to allow a negotiated credit against estate taxes with respect to conservation and historic properties, certified as such by the Secretary of the Interior or Agriculture.

SUMMARY OF RECOMMENDATIONS

1. Contributions of "Dealer" Properties:

   That IRC §170(e) be amended to permit deduction at fair market value for a donation of real property related to the purpose or function constituting the basis for exemption of the donee organization.

2. Repeal of 30% Limitation:

   That IRC §170(b)(1)(C), which provides a 30%-of-contribution-base limitation on the deduction attributable to capital gain property, and rules and definitions relating to such limitation, be repealed.

3. Corporate Contributions:

   (i) That IRC §170 be amended to permit the deemed transfer of ownership of real property from one corporation to another in order that the transferee may be considered the donor of such property (such legislation to be patterned upon IRC §168(f)(8)).

   (ii) That IRC §311(d)(2) be amended by adding to the list of exceptions therein the complete redemption of an exempt organization described in IRC §170(b)(1)(A), for real property which is related to the purpose or function constituting the basis for exemption of the distributee.

4. Easement Exchanges:

   That Section 1031 of the Internal Revenue Code be amended to permit nonrecognition of gain upon the exchange of--

   (i) property described in §170(h)(2)(C),

   (ii) to an organization described in §170(h)(3),

   (iii) for a purpose described in §170(h)(4)(A),

   for property of like kind (*i.e.*, real property) to be held either for productive use in trade or business or for investment.

Summary of Recommendations (continued)

5. Easements and Retained Mineral Interests:

That Section 170(h) be amended, by adding a sentence to paragraph (2) thereof, to provide as follows: "The donor may retain a qualified mineral interest in any property subject to a contribution described in subparagraph (B) or (C)."

6. The "Coupling" Problem:

That IRC §§2055(e)(2) and 2522(c)(2) be amended to eliminate the reference to, and requirement of, a "conservation purpose" as a requisite to estate and gift tax deductibility for "qualified conservation contributions."

7. Negotiated Gift and Estate Tax Credits:

That the estate and gift tax provisions of the Internal Revenue Code be amended to allow a negotiated credit against estate taxes with respect to conservation and historic properties, certified as such by the Secretary of the Interior or Agriculture.

William T. Hutton

Mr. **Reilly**. We turn now to Mr. Paul Pritchard.

STATEMENT OF PAUL C. PRITCHARD, PRESIDENT, NATIONAL PARKS & CONSERVATION ASSOCIATION

Mr. **Pritchard**. Thank you, Bill, Congressman Lagomarsino. We at National Parks and Conservation Association welcome this opportunity to be a part of this panel, in part because we are not lawyers, but because we are concerned that all of the deliberation, the concern, and the attention that must be placed on this issue which we fully support. It will take a great period of time, which we believe will cost us great resources in terms of the available public and privately owned national parklands, to resolve it. We are very concerned, as I am sure all of us are in this room.

We take the challenge seriously that Senator Wallop has given to us, and therefore, we come forward with at least some ideas that don't deal with the specifics of changes as has been carefully crafted by members of the committee and other individuals who are authorities on these issues. We rather would like to propose ideas that deal with the basic intent or concept of the tax law.

We believe there is a great need for change. We focused, as I said earlier, on the issues of the national parks as I think it is probably easier for us to do, and it makes more sense for tax law in this particular area to focus on specifics. A major crisis faces the national parks in the conflict between the large number of private inholdings and the inability of the National Park Service to fulfill the need to properly protect these properties. Techniques such as easements have little real impact on the national parks, or State and local park systems. We believe the staff report and the other suggestions we have heard here today have provided very important additions and corrections to the Tax Treatment Protection Act of 1980. Easements have been largely limited, we feel, to the preservation of land which could be used for some commercial activity such as farmland and forests which we actually support. Mr. Thompson's suggestions I think deal with those issues specifically.

Even with these two activities, there has been little real success in our Nation in preserving these important land use activities of agriculture, timber production, et cetera. Therefore, I think we should reconsider our objectives with review of some models which we think have provided successful resource protection in ways other than or in addition to fee simple.

One might compare the status of preservation of inholdings in national parks with the need to protect privately owned historic resources in our country during the 1960's and 1970's after the passage of the Historic Preservation Act. While the Historic Preservation Act was passed to encourage varying methods of preservation, no successful method was found to preserve the great wealth of privately owned historic resources in this country until 1978. At that time, the Historic Preservation Act was reinforced by section 2124 of the Tax Reform Act of 1978. This section and subsequent amendments of 1980 provided accelerated depreciation to developers and property owners for the protection of historic resources, and we believe it made a significant difference. From my own experience as the Deputy Director of the Heritage Conservation and Recreation

Service in charge of that program, I can tell you in the 2 years from 1978 to 1980, over $1 billion of development occurred that was approved by a staff that was less than eight in number, and some of those were temporary personnel at the Federal level. I think that is a significant contribution, and I would recommend we look toward that program.

Specifically, we believe that there is an important need for us to go back to the basic objectives that we are concerned about—protection—and look at this particular model and others for the preservation of national parks. The objectives we feel have to begin with a program that should recognize that inholder property owners are a diverse group facing diverse economic needs and personal objectives. In the historic preservation area this is truly the case with developers, homeowners, and others.

Second, we feel the value of the property should not necessarily be increased or decreased because of the tax incentives. As you can imagine in historic preservation, it is difficult to put an exact value on these properties. We believe it is important that that concept be easily understood and that was clearly the case in the model cited.

Third, we believe that the concept must be self-executing, and I think Mr. Browne's concern about the concept of certification is an important one. That is the major criticism that occurred with this program. I would suggest to you that the very fact that a property is identified as being within the boundary of a national park variably by law and the deliberate process by Congress is sufficient for certification, and therefore would take the whole process out of a need for Federal review and approval by any Federal employee.

We also believe that the local tax law should not be adversely affected. This is a difficult one to deal with, but we think it has to be addressed.

Finally, we think the protection of park resource must be paramount, and it must be permanent, and we, therefore, question the potential of local land trusts protecting lands within the national park boundary.

Let me move to a specific second mode. We think the concept answer lies in a combination of tools, including tax credits, tax deductions, and also a very important concept that we haven't really addressed and seem to be somewhat afraid of addressing; that is the idea that somehow land located within a national park may be land that should be depreciated. Contrary to our national concept that all land appreciates, land that is identified by Congress to be within the boundaries of a national park is land that has little value for the highest and best uses.

We also feel that this land in fact is under great pressure, public pressure if you will, pressure from supervisors and others that are concerned about the preservation of that resource. Therefore, we would suggest that it is important that we look at that land and give that owner some additional incentives, incentives that would further help improve the value or the deduction for that land by the depreciation of its value.

We realize this is a very sweeping concept, but it is one that we simply lay out before you since it has not been addressed up to this point. We think it is important to realize that the national parklands are in crisis if we are not going to provide sufficient funding through Land and Water Conservation Funds. Therefore, these and other tools must be implemented quickly if we are going to be successful in protecting these important resources.

Thank you.

[The prepared statement of Mr. Pritchard follows:]

NPCA

STATEMENT OF PAUL C. PRITCHARD
PRESIDENT
NATIONAL PARKS & CONSERVATION ASSOCIATION

PRESENTED TO THE
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
U.S. SENATE

June 15, 1982

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NPCA

TAX INCENTIVE FOR NATIONAL PARK LAND DONATIONS

A major crisis facing the national parks is the conflict between the large number of private inholdings and the inability of the National Park Service to fulfill the need to acquire those properties. This problem has been exacerbated by the reduction of available Land and Water Conservation Funds, and further complicated by those who prey upon inholders by stimulating the worst fears of property owners. The need is to encourage inholders to use their land in a manner consistent with park plans by methods in addition to fee acquisition.

The major source of funding for the fee simple acquisition of these park lands has been the Land and Water Conservation Funds. Unfortunately, the current administration has proposed little if any actual funding for the acquisition of these very important lands. Heavily impacted national parks such as the urban units which could provide a great deal of the needed public recreation are often the most endangered. For example, the Chattahoochee National Recreation Area, the Santa Monica National Recreation Area in Los Angeles, as well as other new urban recreation areas are largely unprotected by fee acquisition.

Finally, some of these lands are appreciating in value every day. Through subdivision or other resale activities, these lands are increasing in value without any real prospect of acquisition by the Federal government during the next decade.

Techniques such as easements have had little real impact on national parks and other state and local park systems. The staff report we believe, has very important additions and corrections to the Tax Treatment Extension Act of 1980 (P.L. 96-541). Easements have been largely limited to the preservation of lands which can be used for some commercial activity, such as farmlands and forests. And even with these two activities, there is little real success in preserving these important land uses. Let us reconsider our objectives with a review of some models for successful resource protection in ways other than fee simple.

One might compare the status of preservation of inholdings in national parks to the need to protect privately-owned historic resources in our country during the 1960's and 1970's after the passage of important historic preservation legislation. While the Historic Preservation Act was passed to encourage various methods of preservation, no successful method was found that preserved the great wealth of privately-owned historic resources

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in this country until 1978. At that time, the Historic Preservation Act was reinforced by Section 2124 of the Tax Reform Act of 1978. This section and subsequent amendments of 1980 provided accelerated depreciation to developers for the protection of historic features like facades. In the first two years alone, this program was so effective that hundreds of millions of dollars of development occurred in our country that protected historic resources with very little federal involvement. Today this program has been so successful that the National Trust has placed primary program emphasis on this preservation of historic resources through tax incentives.

We propose that we look to tax incentives, tax credits and depreciation as methods for preserving inholdings in national park lands. It is important though that a set of objectives be established--criteria which must be met by any system so that we do not lose sight of the primary objective of protecting the parks, not just providing tax shelters for individuals. The following objectives should be addressed:

A) The program should recognize that inholding property owners are a diverse group facing diverse economic needs and personal objectives;

B) the value of the property should not increase or decrease because of the tax incentive, (this suggests that the value of the incentive might not be directly correlated with the value of the land);

C) the concept must be easily understood;

D) the system should be self-executing, similar to Section 2124, without government management but rather government oversight;

E) the local tax roles should not be adversely affected;

F) the protection of the park resources must be permanent.

Given these objectives, there are several methods by which one might protect inholdings. The one most easily accessible is the concept of tax deductions. The donation of a permanent easement for conservation purposes now is treated as a charitable deduction. As outlined in the staff paper, there is little incentive in this approach. An alternative would be to allow a tax credit for an easement, with the stipulation that the values of the deduction would be recaptured if the property were developed or sold. At the end of a specified time, say twenty years, the land would become the property in fee of the

Park Service. A tax credit would provide a greater incentive to property owners and non-property owners to buy into a "national park trust." The property values could be set as are traditional appraisals, by the use of certified appraisers. The appraisal would be of the property in its present use, not some inflated value based upon development potential. The tax credit would provide the stimulus instead of an inflated value at development potential.

In addition to tax deductions and credits, I suggest we also rethink our concept that all land always appreciates. Park lands are unique from lands which are in highly appreciating areas such as urban settings. Park lands privately or publicly owned, have permanent status and by nature of the Congressional authorization, cannot be used for "higher use." Furthermore, park lands are or will be maintained for public benefit rather than "serving in the private market." Another factor to justify a separate and distinctive tax relationship for park lands is that park lands are oftentimes heavily impacted by visitors and, therefore, are lessened in value. The lessening of value due to heavy citizen use has been particularly evident in the natural areas where soil compaction has resulted in loss of stands of trees in recreation areas, where forest fires have been prevalent because of accidental fires started by campers and other visitors.

While there have been several approaches tested to provide tax donations, the major flaw with these is that they have not provided sufficient incentive to the property owner. On the other hand, if park lands established in a trust were allowed to be depreciated, and tax credits were also provided, a system would exist to give tax advantages to the property owner similar to those afforded to investors in capital, much like the historic resources described earlier. A market would be established which would stimulate private acquisition and donation of lands for park purposes and at the same time lessen the need for outright federal acquisition.

Time precludes elaboration on the concept.

The National Parks & Conservation Association thanks you, Senator Wallop, Mr. Reilly and Mr. Noonan for this opportunity to think about new ways of approaching protection for the national parks.

Mr. **Reilly**. Thank you, Paul. Mr. Eugene Steuerle, Office of Tax Analysis of the Department of the Treasury.

STATEMENT OF EUGENE STEUERLE, OFFICE OF TAX ANALYSIS, DEPARTMENT OF THE TREASURY

Mr. **Steuerle**. Thank you, Bill, Congressman Lagamarsino. I should mention before I start that the views I will give are my own and not the Treasury Department. I am not here to make a statement of policy for the Treasury Department but to communicate to you some concerns, a portion of which are my own.

I think the problem we are addressing today is one in which the value of the land to the public is equal to the land of the private individual but the land of the private individual is not necessarily equal to the value of the land to the public. It is a classic case of externalities. We try to maximize or create the maximum social gain at the least cost.

I think the paper that you have before you addresses various ways to provide incentives through the Tax Code to try to deal with these problems. There are three criteria generally that are used when tax incentives are applied to any type of social purpose. These three criteria are efficiency, equity, and ease of administration. The efficiency criteria you have heard expressed to you at various times throughout the last 2 days in various guises, but essentially the efficiency criteria, which applies as well to direct expenditures as well as Tax Code changes, is that we want to achieve the most benefit for the least cost.

As a general economic rule, we do this when we don't have the problem of externalities, and we don't have people who can enjoy different goods but only one may necessarily control them. We try to externalize those things. When you or I go to buy something at the store, we pay the entire cost. To the extent that the good may be subsidized, it may cost us $40 for something that is worth $50 to us. But if the taxpayer has to contribute another $20, we paid $60 total in social cost for something that was worth only $50 to the individual.

In cases where we involve the Federal taxpayer as a subsidizer of any particular cost, we are never quite sure that we externalize those costs either among the beneficiaries of the service, or the person who may have contributed or donated the good. As an example of the type of problem that could arise when we don't externalize costs, I would like to turn to questions of capital gains exclusion. We all know that capital gains exclusion is worth much more to the higher income tax than to the lower income taxpayer. What that means is that when a purchase of land is made, the purchase price is really different for various taxpayers, according to the tax bracket of the individual whose land is being purchased. Therefore, the public valuation is really not on a pure basis of benefit to cost but is partly based upon the value to the landowner of that capital gains exclusion. As a result, we may end up with a case where we have two pieces of land identical in value to the taxpayer in which very different costs are paid simply because the marginal tax rate of the taxpayer from whom the land is purchased differs.

The second rule is that of equity, which is simply that people of equal positions should pay equal tax. I personally have thought there are enough arguments for having a tax credit for charitable contributions. I do not think there is necessarily a good argument for having tax credits for one type of charitable contribution. The difficulty with having a tax credit for one type of general contribution is we begin to distinguish among taxpayers whom we consider to be equally able to pay taxes, according to the type of contribution they give. If we want to deem one type of charitable contribution more valuable, that is one thing, but if we do not, we end up violating our equity rule. If we give a tax credit for only donations of easements, what are we going to do about donations of art work? How about donations of money to schools or donations of buildings for other social purposes? What about support of churches? It is hard to separate out only credit for one particular purpose.

The third rule is ease of administration. That means, for instance in the case of a gift, that we want to easily be able to value that gift at a market value. Many of the problems that have arisen in terms of initial writing of regulations or anything else occurred because of the difficulty of valuing a gift. If we don't value correctly, or can't, we create a situation where we invite all sorts of abuse.

Now the typical way in estate tax to solve this problem is to have arms-length types of transactions. As long as the person who is buying a particular piece of property pays the full cost, we assume what they pay is indeed what they value it at. However, when we allow something such as donations to offset the estate tax, then we end up requiring a tax administrator to try to measure whether that donation is indeed valued at the cost at which the estate tax administrator says it is.

In this case there is no real difference in net cost to the public if this easement were purchased outright than if an estate tax credit were given against easement. The net cost to the taxpayer is exactly the same.

The advantage of having the purchase being outright by those people who would conserve the land, be it local government or any other organization, is that the costs that they pay is stated explicitly and is valued for what they are willing to pay. We eliminate the arms-length transaction and allow the donation of property by the estate, then we have no easy way to judge whether that valuation of that property is indeed correct because there has not been an arms-length transaction. It does not mean we would not like to have donation of certain properties, but the valuation becomes difficult.

Mr. REILLY. Time is up.

Mr. STEURLE. Let me conclude by saying the results of various changes in tax policy are not always what we expect. In one example, if we allow an individual to determine by donation the extent to which we will grant easement rights in one part of a city, an expanding city, we may very easily drive a crisis in that part of the city. If the public has not been there to determine which easement right is valuable, the most we may do is not discourage the use of farmland as farmland but rather simply shift the use of farmland for urban sprawl from one section to another.

Another example is the case of farmland. Many tax systems involve farmland now. So many in fact that farmland has become a tax shelter for many individuals. As it becomes more and more of a tax shelter, it becomes more and more of an idle property to be held by high income taxpayers. Certainly current owners of farms benefit from the increased tax incentives as the price of land goes up, but in the long run——

Mr. **Reilly**. I am going to have to close up.

Mr. **Steurele**. In the long run, the incentive actually discourages young people from being able to enter farming and purchase farmland because they are in the lower margin tax bracket.

Mr. **Reilly**. Thank you. I'm sure Ed Thompson will want to come back to that point. Finally, Peter Raynor, Office of the Solicitor, Department of the Interior.

STATEMENT OF PETER RAYNOR, OFFICE OF THE SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. **Raynor**. Thank you, Mr. Chairman. I am a Federal lawyer, a lawyer with the Department of the Interior for the last 11 years, and I would like to speak from that perspective.

I think the value of this gathering is that we all speak from a different perspective at a common problem. The typical Federal solution to many resource problems is well illustrated by the plight of the Buffalo. The typical Federal solution is to wait until the resource is almost all gone and then to put a fence around it, appoint an agency to take care of it, and then consider it solved.

Mr. Davidge this morning suggested that we have got to get ahead of the cement trucks. What I would suggest is that other solutions are possible if in fact you can get ahead of the cement truck, or ahead of the last buffalo, or ahead of the last whooping crane, and what we typically have done to solve problems is deal with them in a crisis perspective.

One of the advantages of the workshop today is that we are not in a crisis perspective. We are dealing intellectually with some difficult but very interesting and challenging problems. When I came to Washington, one of the things that I was struck by was the existence of the Chesapeake Bay resource and the existence of the traditional water craft located there. I asked myself at that time why is that true? Why are they still there when most other natural resources industries are mechanized and industrialized and going on at great rate? Well, I did a little research on it, and the law is about three lines long, and it says that oysters—which was the purpose of the law—oysters have to be harvested under sail. It is a little more complicated than that, but essentially that is the guts of the law, that if you want to harvest an oyster with a drudge, you have to have a skipjack and you have to sail in November, December, and January. You have to haul those oysters up under sail, and it isn't easy. Therefore, there are oysters and there are also watermen. So a very simple law saved two important resources, a way of life and also a natural resource.

I was speculating as I was making some notes today, if we had that type of law with regard to buffalo the law would have been that anybody that wants to harvest a buffalo has to be on a horse with a bow and arrow, or a gun perhaps, and shoot it, and perhaps we would still have buffalo outside of Federal fences.

The point I am getting at is that small laws, gentle laws if you will, can be effective if they are applied early enough in the process, and that is the opportunity we have now, to think about some laws that we could apply early on in the process.

I think there are three things that have to be done to establish that system. One Mr. Hutton mentioned and I couldn't agree with him more, is the need to identify areas—the oysters, the buffalo, the redwoods, what have you—that should be protected, the areas that are worthy of protection.

The second thing, the second way that you can approach it is through the tax law. It is an economic vehicle. If you read the Washington Post over the last 6 months, there have been tax incentive proposals for just about everything from foreign car sales to condo conversions. For example, one proposal was a tax credit to encourage the purchase of American cars. A variety of tax incentives, but there is good reason for that—it is an efficient system. You don't have to have the Federal agency with the fence holding the buffalo. You have a system that works by itself.

The third thing—if we deal with identification as the first item and the possibility of tax changes as the second—then the third would be your oyster situation, changes in substantive legislation. Subtle changes that would tip the balance one way or the other with regard to those areas that you have identified. The oyster situation is so simple as to be beautiful. What other possibilities are there? Mr. Browne mentioned the land trust boom, and we see it and we feel it and we think it is important.

A right of first refusal has just been held constitutional in the Boundary Water Canoe Area. A right of first refusal for land trusts within established areas of national importance would be a valuable substantive tool and one you might want to approach. Another might be a change in liability or a cause of action, shifting the burden, clarifying what is a nuisance and who can benefit from bringing such an action, away from the developer back to the farmer or the rancher if you will.

There are other thoughts, but the point there is that substantive legislation with regard to these areas might also be possible.

The beauty of the tax concept paper today I think is that we are ahead of the curve in this sense. Although there are some areas immediately threatened, there are many areas that can still be protected by gentle laws. One of the pressing problems at the Department of Interior right now is the "threats." Everywhere you go you hear the threats to parks. We teach a Park Service course about how to deal with threats, and we talk about the home game and the away game. An away game is dealing with those threats that arise outside the park, and the dilemma in dealing with causes of threats is that they are often subtle. There are many, a variety of ways that they come up. It is not just one problem, typically just not one big problem, but an entire threatened area or an area adjacent to it that needs attention. And I would suggest Mr. Chairman that Jackson Hole is a classic example of that situation. The whole situation is classic; there you have a national park with an important area right next to it which is of value in itself and also a value to the park, that is a threat to the park.

That would be an area that it would seem to me that would clearly stand out as an area that ought to be identified as an important conservation area.

Mr. REILLY. Red light.

Mr. RAYNOR. I would close with the thought that taxes are very important—I am not a tax lawyer, but I have read and worked on this, discussed it with others. It does seem that the historic preservation movement has shown that if you tip the balance toward preservation the economics of the situation will protect areas in a way that they can work within and be protected by private initiative. I think the key point, and I would just raise this with Mr. Thompson, the key point is that the protection needs to be permanent.

If you have a tax incentive program that is simply a mortgage program for future development, that can be paid back, you have done nothing but spend money now that you will lose later.

Mr. REILLY. Thank you, Pete. Questions or comments? Senator?

Senator WALLOP. I would like to make a couple of brief ones and perhaps just one of them serves me a little bit. It just occurred to me while we were talking because I hadn't realized the enormity of the numbers of these little conservation groups that were trust receptacles for this type of thing.

The question there would be what are we doing with the survivability of those entities? We placed great articles of national value in them and they depend on volunteer contributions. Tony pointed out that perpetuity is a long time, and so what happens. Somewhere in all of this there has to be a means by which whatever they gather up can be kept in the national trust.

Mr. BROWNE. I think that is a major problem. It is implied in the 1980 act itself. I think conservation easements have to have built-in provisions for the shift of the burdens and responsibilities to other organizations, even sovereign organizations, in the event of the failure of the particular one. I think that is the kind of problem that has to be solved.

Senator WALLOP. One of the other things that occurs to me is that we need some other judgment. I have heard what you said in the belief that those local judgments are valuable, but going to what Mr. Steurele said, we have not got the capacity to have every acre of land donated to some sort of national trust. There won't be anything to farm if it catches on. There are 400 of them now and if they go geometrically as they have over the past half decade, there has to be some additional entity I would think that might want to make a judgment at some moment in time as to whether or not what we are receiving doesn't get into some other national priority like feeding the Nation. Would you comment on that?

Mr. BROWNE. Well, I think these are fair concerns, and I am not prepared to provide answers. I think the matter should be explored.

Senator WALLOP. My point was really not, that anybody here would be able to provide any answers, but if you saw that as a concern?

Mr. **Browne**. I don't think the national record to date suggests that enormous amounts of land are suddenly disappearing from the economy. I think the record to date is that most of these organizations tend to deal with small tracts which are sites of the most critical problems in their local areas. It has not gotten to that stage which you suggest. I think an oversight process to track it, perhaps the sunset date kind of approach, would be very useful. But, again, my experience with these organizations around the country is that they are dealing only with the most critical, local needs that they have, and it is not a runaway operation.

Senator **Wallop**. Well, I agree, but we are getting closer to that threshold because they are growing rapidly.

I would make one last just observation, and that is that try as we will to get in front of the cement truck—and your example, Mr. Raynor, of Chesapeake is an excellent one—ultimately there is always a cement truck. I mean when we have done a good job saving a lot of things, there is still going to be pressure finally on the last little bit that remains free from the constraints that good policy put on there, and they will return that crisis approach to it. I don't mean that by way of discouraging us from what we are doing here because that would be a luxury, but I think that your other example of Jackson Hole is exactly what you are talking about. I mean that part of the Rockefeller family and others were way in front of the cement truck to give it to the Nation and Congress to make it a park and save an extraordinary piece of American geography for world preservation, but the cement truck is there on the periphery, and no matter what we do, we will always be confronted with some kind of a last-of-the-best crisis decision. You ought not to discourage us from doing what we are doing here but we ought not to expect that whatever we do will resolve all the problems.

Mr. **Reilly**. Congressman, would you care to comment?

Mr. **Lagamarsino**. Mr. Horkan brought up several really good points that people who are going to be drafting legislation ought to keep in mind. Perhaps the suggestion that he makes on page 5, which I understand has been made to Congress before, and I guess I don't know why it wasn't adopted, might help at least to some extent with the one of the two problems that Mr. Browne is concerned with. But his second problem is perhaps even a greater dilemma. My legislation doesn't take care of either.

You still end up with the problem of appraisal and audits and all of that in many cases. I don't know how you solve that problem except perhaps through some kind of direction to IRS. Or perhaps, in some situations, such as a national park in California, where there is a potential estate tax problem, people should be able to pay a portion of their estate tax by transfer of the property involved at its appraised value. This approach should be no problem because IRS should, at some time, come up with an appraisal on that one. But by contrast, in the case of donations of easements it may often be years later before we find that they don't accept that.

Mr. **Horkan**. The delay is usually the problem. Most people are willing to take a risk if it can be resolved within 1 year or 18 months. You can tell a landowner that he can't be told what the appraised value of the easement is going to be, but it will probably be within the range of 15 to 25 percent of the before value of the land, if you are willing to take that risk—and a great many of them are. But if it is going to be 5 and 6 years while it languishes as the IRS tries to make up its mind, that is too long and I wouldn't advise anybody to take that risk, particularly at a 20-percent per annum deficiencies rate now.

I really don't expect miracles of the Internal Revenue Service or any appraisers. This is a very imperfect business and people have got to be willing to take a pretty good spread as to what you are going to come out with, but IRS has simply got to move more rapidly in this field. It is just that simple. They are overburdened and they don't have the expertise, and maybe they ought to hire a few expert appraisers first as I suggest, and let them make up the decision. But, they have got to do it within 12 months. Then you will get the easements again. The people that want to donate open space easements to preserve critical environmental areas are highly motivated. They are willing to take quite a few risks that a person without that motivation is not taking.

I am not discouraged about it at all. I think with a little bit more effort along the lines you suggest we will get going again. This has got to be limited, though, to special areas. I think the areas may be a little bit too narrowly defined at the moment, and I am not suggesting that 8 percent of the open land in Virginia should be an easement. I think 3 or 4 percent would be a maximum, but that 3 or 4 percent would maintain the character of the whole State.

Senator **Wallop**. Would there be any value in trying to set up a mechanism by which those donations could be accepted or rejected in advance? I mean the reason I ask this is because my father made a major donation to the Nature Conservancy. We had no idea whether that had been a good idea. Not long after he retired we tried to find out, and it turned out to have been an excellent idea from the Nation's standpoint, and only a rather moderate idea from the standpoint of my father, but he wouldn't regret it. The family doesn't regret it. But in terms of some people who are trying to make that the critical cutting edge of their decision it might.

Mr. **Horkan**. Theoretically the private rulings would do that but it doesn't work that way. In private rulings, you are continually asked for more and more information and 18 months later you are still trying to process it. By then the motive is gone. Most people when they want to move they want to move within 2 or 3 months, and we have got to be able to accommodate that kind of a judgment.

Mr. **Reilly**. Ed Thompson.

Mr. **Thompson**. Yes. I would like to respond to Mr. Steuerle's remarks here. Without commenting on the performance of Treasury here, I would just like to look at an underlying assumption of the three principal criteria that seem to be applicable to the use of tax policy with accuracy and ease of administration. It seems to me in your discussion of them, the assumption comes through that somehow the protection of critical areas, farmland, what have you, is a matter of charity, that whatever we are talking about here in terms of incentives somehow relates to the charity and charitable impulse we are trying to stimulate.

We don't try to stimulate a charitable impulse when we enact the tax leasing provisions. We don't rely on charitable impulses when we try to provide homeownership by allowing deductibility of mortgage interest, and I think that we just need to broaden this out a bit and ask ourselves do we really want to limit ourselves to stimulating charitable impulses instead of business impulses when we are talking about protecting resources that feed us.

Mr. **Noonan**. I would like to ask of Mr. Raynor, does the administration or Department of Interior plan to bring forth legislation or a legislative package in this area this year?

Mr. **Raynor**. I think the only fair answer is that it is under consideration. The Department was very pleased to participate in the workshop, and one of the groundrules was that we would step back and look at all the products ourselves. I think we certainly are going to do that.

Mr. **Noonan**. I hope you would do so. There is a wealth of talent here, obviously. I was adding it up over here—100 years at that table. I won't say how I added that number up, but there is a wealth of talent here, the point being that hopefully in the months and years ahead you can continue to draw upon it as you come forth with the legislative package.

Mr. **Reilly**. Of necessity, it will have to be brief, but are there questions or comments from the floor?

Mr. **Metzker**. Phillip Metzker, Interior Office of Policy Analysis—this is really addressed to anyone who wants to take a stab at it. It seems one of the main issues discussed here has been the question of certification. Mr. Browne has suggested having a land trust do it themselves. There is a concern of putting a group of very committed and trustworthy people in the position of being beneficiary and judge at the same time, and equal or greater concern over the performance or nonperformance of the IRS under the existing legislation.

What about the possibility for having Interior or Agriculture, or a combination of the two, draw up criteria which would be automatic in their application, and drawing State and local governments into this activity as partners. They could define, for example, specific types of agricultural land such an approach would clearly inject a note of predicability into this without having it be a judge and beneficiary potential conflict.

Mr. **Reilly**. Peter? I must say from the point of view of someone thinking about running a conservation organization that receives donations from people that then had the capacity to make certifications with enormous economic benefits, thereby conferred, I would wonder about those kinds of pressures, too. I would also wonder why it was you didn't talk about the State or the local governments.

Mr. **Browne**. Time is running out. In Maryland and Virginia and Massachusetts we basically have certification programs. It worked fairly well in Massachusetts but it got politicized. It is breaking down and slowing down. I know there are lots of States where there isn't any mechanism to do this, but I think there is room for some kind of partnership arrangement that would elevate the local land trust to a much stronger participatory role. As that role strengthens, then I think your social roles of certification and all that that implies would perhaps diminish. It may very well be a partnership.

Mr. **Reilly**. Over here?

Mr. **Cushman**. Chuck Cushman, National Inholders Association—I am just curious how this would apply between developed and undeveloped parcels, in communities that exist in the Federal areas. Aren't we potentially subsidizing the destruction of unique social, cultural values within these areas, making it financially rewarding for the community to be top heavy, and the wealthy to pass resources on to land trusts and other agencies. Potentially, you get a destruction of the fabric of the community in the process.

Perhaps we should limit this concept to undeveloped land in order to avoid that or give it some consideration. I throw that to anybody who wants to answer.

Mr. **Reilly**. Does anybody wish to comment?

Senator **Wallop**. Only one thing that comes to mind. I have read since I have been in Washington a number of comments expressing dismay that some of the larger estates within the city of Washington have been broken up to go to housing developments. It appeared that most people like the fact that those estates were open within the city.

To be sure it would end out as some kind of blessing to somebody who was wealthy enough to have it in the first place, but it is also another kind of public purpose which they didn't feel they had the tax dollars to defend. My initial reaction would be that somehow or another those decisions ought to be at the local level. I think most of the people in the audience will have recalled with dismay some of those larger estate breakups within the city were response to congressional actions. It seems that all the city wanted them as estates but they weren't economical that way, and clearly the city of Washington does not have the capacity to go and buy those estates from development interests.

Mr. **Reilly**. Lloyd Irland from Maine?

Mr. **Irland**. I would suggest that I really like Mr. Raynor's comments. Many of those cement trucks say U.S. Corps of Engineers or Maine Department of Transportation or X, Y, Z Sewer and Water District, and a good deal of the land conservation problems we have, come from public subsidization of development. That is fundamentally unsound and uneconomic quite apart from its environmental effect. An example of Secretary Watt's representations to Congress is that subsidized development of barrier islands ought to stop. It was a good example of getting ahead of the cement truck, because oftentimes the cement truck has the name of a Government agency on it. We can make a big contribution to forwarding our conservation objectives by getting a little more control over that cement truck.

Mr. **Reilly**. One last comment or question.

Mr. **Jarvis**. Destry Jarvis, National Parks and Conservation Association—it seems to me that one possible way to get the inventorying needed in those areas that might need to be certified for this program would be to use the State side of the land and water conservation fund. Although it is not getting funded with grant money, those programs which are still in place in the 50 States might well take on as a project this inventory and surveying and certification procedure.

At the national level, you might still want to have some Federal entity doing that, maybe the existing conservation agencies. But in order to apply the tax treatment that we are talking about, you have need to have inventory of those lands that might well qualify to be certified. It would seem entirely possible that the individual States themselves might undertake this as a major initiative.

At the Federal level, for example, my own organization last fall did a contract job for the Council on Environmental Quality looking at so-called green line areas. These are areas of national significance or concern around the country, that merit some kind of protection different from the old established park and buyout routine we found in some 65 or 70 areas. There are certainly areas at the Federal level that merit that recognition, but at the State level there would be additional sites and it seems that might be a way to get that inventorying done.

Mr. **Reilly**. Any final comment here?

Mr. **Pritchard**. Mr. Chairman, I would just like to raise again our direction from Senator Wallop and others. I have great admiration for Mr. Raynor. The only disagreement I have is that there is in fact a crisis brewing, at least as it addresses the national parks, and I think that if we are to wait for long periods as we discuss these issues, we will have problems with depreciation of values. While we are very supportive and want to work with this, we recognize you must move quickly to find some solutions.

Mr. **Reilly**. Thank you. Many thanks to all of you, to you, Congressman, for moving your specific ideas forward, and for the very high quality papers and presentations.

I must say as a nontax lawyer I am enthralled watching tax specialists talk in an extraordinarily fluent way about the most complicated issues, complicated at least to some of us who aren't specialists. We appreciate all of the energy, time, and effort that went into the preparation of these materials. There is a great deal more in the papers that have been prepared than the participants were able to present here under the enforcement of the time clock. I would encourage you to obtain some of those papers. The principal paper itself is a substantial piece and so are some of the respondents' as well. Many thanks to all, and when we return we will discuss user fees.

[Whereupon, a brief recess was taken.]

Mr. **Reilly**. We are prepared to begin the panel on user fees and charges. The panelists are going to have 8 minutes, the respondents 6 minutes, and Senator Wallop is going to start this panel by making a statement.

Senator **Wallop**. Bill, I will not be able to be here throughout the remainder of this session, or at the time when you concluded. I especially want to thank you, Pat, and George plus the panelists, the respondents and the audience.

Last year's workshop was exhilarating, but this one was even more so. If last year provided us with a number of administrative starts, and it did, this one should begin to get us down to some legislative proposals. Then, of course, we lose the nice, friendly atmosphere that has surrounded the workshop format and you get into adversarial kind of situation that legislative proposals bring with them.

I wonder if I could impose upon you, Bill, and Pat to do it again as you did last year. I know it is a lot extra to ask, but to give me a report as to what you gained out of it. Pull out your priorities. I would like to have those thoughts as an addendum to the report.

When we complete those summaries, you, Pat, George, and I probably will meet again and track where we might go, which initiatives might be the highest legislative priorities. It is Improbable that we would be able to get these proposals through in this year, but they would be on the table for people to begin to consider them. There are also some administrative motions that are possible out of all the wisdom that has been generated here.

I particularly hope that I can continue to be on my present committees, the Resource Committee, and the Finance Committee because much of our creativity seems to be most quickly available to us through that dual mechanism of being able to identify the resources and to provide incentives to protect them.

These papers and the panelists and the questions and responses have been very, very exciting to me. I simply cannot thank enough those who have given of their time or their employees' time to come and make this possible. I look forward to some significant advances in all of these concepts because of it, and I especially again want to thank you, Pat, and George.

Mr. REILLY. Thank you, Senator. I would like to say on Pat's behalf that it has been a great privilege for us to come up here and moderate these sessions and to participate with George and your staff in helping to draft them and invite people here, all giving their own time freely without any compensation. They have done that. We have all done it in response to the great leadership that you have shown on an issue that needs an extraordinary amount of attention. I don't think there is any real precedent for what we have done where we have had a workshop 1 year that laid the groundwork in very general, comprehensive terms across the board from the Federal land policy needs, and then moved on quite specifically to consider legislation opportunity. We are all grateful to have been a part of this, and it has been very exciting to us.

Senator WALLOP. I will stay for a little bit to hear the beginning of this one. Thank you.

Mr. REILLY. We turn now to the first panelists on our panel on user fees and charges, Mr. Derrick Crandall, president of the American Recreation Coalition. Derrick?

STATEMENT OF DERRICK A. CRANDALL, PRESIDENT, AMERICAN RECREATION COALITION

Mr. CRANDALL. Thank you, Bill. For 20 years Americans have enjoyed remarkable growth in recreation opportunities and recreational participation. It has been spurred by increases in leisure time, discretionary income, and by technological developments. The result is that Americans have made fun and fitness a key portion of their lifestyles.

Tremendous increases in public recreational facilities have played a central role in this recreational growth. Since World War

II, Federal, State, and local government units have acquired new parklands and constructed facilities ranging from softball fields to elaborate indoor recreation facilities. Public recreation facilities, typically available at low or no cost, have been a major stimulant to recreation paricipation.

The private sector involved in recreation has also grown dramatically. It constitutes a major economic force in America today with more than $200 billion per year in annual consumer expenditures and employing some 5 million persons, yet the importance of recreation today and the size of the governmental and industrial infrastructures which serve America's recreational needs fail to protect recreation from a very real and growing threat.

The primary threat to recreation in America today involves the public recreation provider network. Although recreation opportunities are provided by diverse and large aggregation of public and private interests, public recreation problems have come to play a disproportionately large role in assuring widespread recreational facilities. The term "disproportionately large" is prompted by the fact that total expenditures on recreation at the Federal, State, and local levels is not immense, some 5 billion and perhaps 2 percent of the annual consumer expenditures, yet public recreation areas are key catalysts of and hosts for recreation in America.

Severe budget constraints at all government levels today have halted the expansion of most public recreation systems and further threaten the deterioration in the quality of recreation experiences on public lands. How have we reached this juncture where public policy and budget decisions threaten to overshadow the marketplace demonstrations by Americans of the value they attach to recreation? Part of the answer lies in the primary reliance of public recreation programs on general revenues. This has forced recreation programs to compete head to head with defense and education, welfare and medical services, police and fire services, for an increasingly scarce commodity—general governmental funds.

Even in less troubled economic times recreation has not fared well in the revenue allocation arena. A study published in 1978 in the Journal of Leisure Research reported, "Examination of U.S. Census information showed that the priority status of leisure services in the competition for city tax dollars declined between 1964 and 1974 in 19 or 30 major cities in the United States." One consequence was a sharply increased dependency on Federal funds. For fiscal year 1981, the fragility of State and public recreation program budgets has been underscored. Can State and local governments be expected to cushion Federal cutbacks to public recreation programs? Possibly, but the prospects are thought to be worse than at any time in recent memory. At the State and local levels, revenues are not keeping pace with growing costs and borrowing has become difficult and costly.

Local units of Government face hundreds of billions of dollars in capital expense needs in the coming decades to replace aging prisons and health care facilities and roads and schools, all items which have traditionally been favored over parks in the political budgetary process. In short, the recreation community should be concerned about the consequences of inaction on public recreation program financing at all levels—Federal, State, and local.

In the recent past there has been a reluctance on the part of the U.S. Congress and other Government agencies to emphasize recreational user fees. In fact, a variety of statutory and administrative barriers now exists which limit the extent and the amount of user fees and charges. These barriers reflect an awareness of the importance Americans attach to recreation on the public lands and a conviction that recreation is of sufficient social value to our Nation to be subsidized.

Others have felt that this is wrong, that in fact those deriving the benefits of recreational experience on the public lands can be reasonably expected to pay a fair share of the costs of providing them. The American public involved in recreation has unquestionably benefited from the policies of the past. Thus it can be argued that the policies of the sixties and the seventies were right for that period.

As we look ahead, however, it seems likely that a continuation of existing policies, including a primary reliance upon allocation of general revenues to recreation programs for operating expenses, could rob Americans of the leisure-time choices they so enjoy.

User fee systems need not be onerous or unpopular. At the State level a variety of user fees are now employed—boat registration programs, hunting and fishing licenses, and many more. Many local park and recreation programs make extensive use of fee-based classes and programs. Even at the Federal level user fees in the form of excise taxes under the Dingell-Johnson and Pitmann-Robertson Acts are accepted and have had a remarkable effect upon those recreational pursuits.

Many of the programs covered by these fees are enduring today's budgetary difficulties quite well because the collected fees are earmarked to those programs from which they are collected. However, there are user-fee systems which do not develop support and do not assist recreation programs to deal with budget difficulties, and several Federal examples of this type exist. For example, recreation fees at Federal sites are not currently returned to the operating budget of the collecting agencies. Recent initiatives to raise fees for camping in national parks and forests at the same time many services are being reduced thus expose Federal land managers to great criticism by users of the area who now pay more for less. Millions of dollars in Federal fuel taxes an paid by snowmobilers, four-wheel drive vehicle operators and those who use offroad motorcycles, and none of that money is coming back to benefit those recreationalists.

In the case of boating interests, they did succeed in enacting in 1980 a piece of legislation commonly referred to as the Biaggi plan. Through three successive budgetary cycles there have been no dollars allocated or appropriated to fund that program.

One of the most difficult issues associated with the recreation program is semantics. What is a user fee? We have numerous pieces of legislation at the Federal level which seek to define and discriminate user fees? What is an entrance fee? What is a tax? We would suggest that many of these questions are part of the problem, not part of the answer. In fact, we would define a user fee to be a closed loop system where the dollars paid in are returned to the program which generates the public support in the form of a fee paid. Anything short of that is, in fact, nothing more than a specialized tax. We suggest that that is not the kind of program that is likely to elicit general public support.

We would underscore that millions and millions of dollars are already being paid by recreationists to the Federal Government. Any discussions about user fees needs to reflect that. In fact, in March 1981 Senator McClure requested the Congressional Research Service prepare a report on the amount of revenues generated through use of fees, entrance fees, and various other kinds of taxes. For 1979 the total of approximately $150 million was established as what the recreationists were paying at that time. Since then, there has been substantial increases in the levies for Federal programs such as campsites, and there has also been substantial increase in terms of understanding of other taxes that are paid by recreationists.

In summary, what I would suggest is that there are three issues that would need to be addressed to establish an effective national policy for user fees.

First, recreation programs' costs need to be assessed accurately. We currently do not have a good understanding of what it costs to provide recreation to the public.

Second, cost recovery strategies must be flexible. What works for one type of recreation, perhaps a licensing fee, would not work for others in the same way such as when we are talking about excise taxes.

Third, we believe that it is essential that a new recreational trust fund modeled after the highway trust fund be established. The fund will be the recipient of collected revenues at the Federal level. Then, when the Congress makes a judgment as to what kinds of recreation or what kinds of services are to be provided on a nonfee basis, the cost of those services can be provided to this trust fund in a way so that there is the year-to-year understanding as to the total amount of money available for recreational programs.

Thank you.

Mr. REILLY. Thank you, Derrick. Mr. Barry Tindall.

[The prepared statement of Mr. Crandall follows:]

DISCUSSION PAPER

Workshop on Land Protection and Management
Subcommittee on Public Lands and Reserved Water
United States Senate

The Recreation Challenge

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THE RECREATION CHALLENGE

Recreation in America Today

For twenty years, Americans have enjoyed a remarkable growth in recreation opportunities and recreational participation. Spurred by increases in leisure time, discretionary income and technological developments, Americans have made fun and fitness a key portion of their lifestyles.

Tremendous increases in public recreation facilities have played a central role in recreation growth. Since World War II, federal, state and local government units have acquired new park lands and constructed facilities ranging from softball fields to elaborate indoor recreation centers. Public recreation facilities, typically available at low or no cost, have been a major stimulant for recreational participation.

The private sector involved in recreation has also grown dramatically. Tens of thousands of corporations produce recreational equipment ranging from pools to racquets, provide recreation services ranging from campgrounds to skating rinks and manufacture athletic clothing. Together, they constitute a major economic force in the American economy: in excess of $200 billion in annual consumer expenditures and some 5 million jobs.

Psychographic studies by the recreation industry underscore the importance of recreation in America today. More than a third of all Americans of working age are best described as "free-time oriented" -- who work primarily to enjoy life with family and friends pursuing hobbies and recreational interests. To them, quality of life depends upon their ability to ski, or play golf, or travel. In numbers, they eclipse those who are "career-oriented" -- those deriving most of their satisfaction and self-perception from their work environment.

Yet the importance of recreation today and the size of the governmental and industrial infrastructures which serve America's recreational needs fail to protect recreation from a real and growing challenge.

Cutbacks in Public Recreation Programs

The primary threat to recreation in America today involves the public recreation provider network. Although recreation opportunities are provided by a diverse and large aggregation of public and private interests -- sometimes in partnership but often in competition -- public recreation programs have come to play a disproportionately large role in assuring widespread recreation facilities. The term "disproportionately large" is prompted by the fact that total public expenditures on recreation at the federal, state and local levels are not immense: some $5 billion, or perhaps 2 percent of annual consumer expenditures on leisure. Another measurement might be based on per capita costs: the Forest Service provides more than 250 million recreation visitor days per year on an annual recreation program budget of $100 million, or a cost of roughly 40 cents for each day of hunting and hiking, camping and skiing, fishing and boating provided. Similarly, the total per visitor day cost of our national park system is $3.

Yet public recreation areas are key catalysts of and hosts for recreation in America. Although some Americans are able to afford memberships in country clubs, private hunting clubs and more, many Americans would be unable to continue their chosen recreation pursuits if the full costs of land acquisition and improvements were reflected in assessed charges -- as private sector recreation providers must do.

Today, severe budget constraints at all government levels have halted the expansion of most public recreation systems and further threaten a marked deterioration in the quality of recreation experiences on public lands. Evidence of these cutbacks abound:

- grants to states under the Land and Water Conservation Fund have been dropped;
- the U.S. Corps of Engineers is closing nearly 400 recreation sites;
- visitor services and interpretive programs, along with brochures describing specific parks, are being curtailed by the National Park Service;
- some municipalities (including Toledo, Ohio) have actually abolished parks departments;
- state recreation program cutbacks include Michigan's decision to leave its public beaches unguarded this summer, in contrast to last year's hiring of more than 2,000 lifeguards; and
- public works programs which have played a key role in maintaining public recreation areas during the 1970's -- CETA and YACC, for example -- are being eliminated.

How have we reached this juncture -- where public policy and budget decisions threaten to overshadow marketplace demonstrations by Americans of the value they attach to recreation? Part of the answer lies in the primary reliance of public recreation programs on general revenues for operating and maintenance budgets. This has forced recreation programs to compete head-to-head with defense and education, welfare and medical services, police and fire services for an increasingly scarce commodity -- general government funds.

The Quest for General Revenues Grows Increasingly Difficult

Even in less troubled economic times, recreation has not fared well in the revenue allocation arena. A study published in 1978 in the Journal of Leisure Research reported:

> "Examination of U.S. Census information showed that the priority status of leisure services in the competition for city tax dollars declined between 1964 and 1974 in 19 of 30 major cities in the U.S. Leisure services generally received steadily decreasing proportions of total city funds irrespective of the level of those funds."

One consequence was a sharply increased dependency on federal funds. Monies provided through the Land and Water Conservation Fund, the Urban Parks and Recreation Recovery Fund, CETA and other federal programs rose to an average of one-third of all local park program budgets by 1980. With sharp decreases in these funds in FY 1981, FY 1982 and FY 1983, the fragility of state and local public recreation program budgets has been underscored. Aid to state and local governments for all purposes has been one of the most significant losers in recent budgets -- not merely failing to keep up with inflation but actually decreasing in current dollars.

Can state and local governments be expected to cushion federal cutbacks to public recreation programs? Possibly, but prospects are thought to be worse than at any time in recent memory. At the state and local levels, revenues are not keeping pace with growing costs and borrowing has become both difficult and costly.

In October 1981, Business Week stated:

> "Falling revenues are now combining with an inability to borrow in a way that is making it extremely difficult for Washington's great partner in the federal system, state and local government, to fill its traditional role of producing the basic government infrastructure for growth -- such elementary things as bridges, roads, sewage, water and mass transit. So serious is the decay of the nation's infrastructure and so poor the prospects for its refurbishment that many sophisticated businessmen and economists believe that the U.S. is entering a period of severe crisis for state and local government."

Local units of government face hundreds of billions of dollars in capital expenses during the 1980's to replace aging prisons and health care facilities, roads and schools -- items which are traditionally favored over parks in the political process. Already the impact is being felt, as Business Week reported:

> "Historically among the best credit risks in the financial markets, the state of California approached Wall Street underwriters in September 1980 with plans for a $100 million bond issue for parks and water cleanup. The plan looked almost boringly routine in an era when state and local issuers tap the debt markets for amounts approaching $1 billion at a crack and use the money for things as offbeat as building fast-foood restaurants. But California financial planners were in for a rude shock. Interest rates leaped beyond the state's self-imposed statutory limit of 11 percent for public debt -- effectively cutting the state out of the bond market."

In short, the recreation community should be concerned about the consequences of inaction on public recreation program financing at all levels -- federal, state and local.

The User-Pay Alternative

In the recent past, there has been a reluctance in the U.S. Congress and in other government agencies to emphasize recreational user fees. In fact, a variety of statutory and administrative barriers now exist which limit the extent and the amount of user fees and charges. These barriers reflect an awareness of the importance Americans attach to recreation on public lands and a conviction that recreation is of sufficient social value to our nation that it should be subsidized.

Others have long felt that such subsidy was wrong, not because recreation was unimportant but because the use of general revenues for recreation represented a resource redistribution effort subject to governmental subjectivity. Governments would spend money to aid certain recreationists and ignore the needs of others.

The American public and many private sector businesses involved in recreation have unquestionably benefitted from the policies of the past. Thus, it can be argued that recreation policies of the 1960's and 1970's were right for that period. As we look ahead, however, it seems likely that a continuation of existing policies, including a primary reliance upon allocation of general revenues to recreation programs for operating expenses could rob Americans of the leisure-time choices they so enjoy.

User fee systems need not be onerous nor unpopular. At the state level, a variety of user fee strategies are employed: boat registration programs, hunting and fishing licenses, for example. Many local parks and recreation programs make extensive use of fee-based classes and programs. Even at the federal level, user fees in the form of excise taxes are levied on hunters and fishermen under the Dingell-Johnson and Pittman-Robertson Acts.

Many of the programs covered by these fees are enduring today's budget difficulties quite well -- where the collected fees are earmarked or dedicated to provide the services desired by those paying the charges. In fact, numerous examples exist whereby those subject to user fees initiated or actively supported substantial increases in those fees. Wisconsin snowmobilers, for example, initiated a successful campaign to double state registration fees to expand the state's snowmobile trail system.

Parks and Recreation Management magazine carried a story in September 1981 reporting on an experiment in Burlington, Vermont, to determine user response to the establishment of an entrance and user fee at a popular local park. The authors concluded:

"1) Park visitors were receptive to reasonable user fees.

"2) Reasonable user fees have little effect on total park use. The mix of park activities, however, changed dramatically. Undesirable activities such as loitering around parking lots declined substantially.

"3) A park entrance fee (for automobiles only) can help alleviate problems of automobile congestion. The establishment of an entrance fee encouraged nearly 20 percent of park users to walk or bike to the park.

"4) Revenues collected were reinvested in park maintenance and improvement. This resulted in favorable public acceptance of the fee program.

"5) A park entrance fee, appropriately designed, does not have to discriminate against older persons. The fee program exempted senior citizens from paying and resulted in increased use by senior citizens."

However, there are user fee systems which do not develop support and do not assist recreation programs to deal with budget difficulties. Several federal examples of this type exist.

Recreation fees at federal sites, for example, are not currently returned to the operating budgets of the collecting agencies. Recent initiatives to raise fees for camping in national parks and forests at the same time many services are being decreased thus expose federal land managers to greater criticism from recreational users of the area who now pay more for less.

Similarly, millions of dollars in federal fuel taxes generated from fuel used in boats, snowmobiles and off-road vehicles are not returned to these users. In fact, boaters secured legislation to earmark their monies in 1980 -- the so-called Biaggi Act -- but the resulting fund has been ignored in three successive budget cycles.

Even dedicated fee programs need one further ingredient: a means for those being charged to identify the level of services for which they are willing to pay. In the private sector, the marketplace determines whether consumers will pay $10 per hour for court time or $20; a wrong judgment can lead to a business failure. The market for public recreation providers is constrained; all boaters must register their craft to be legal, regardless of the value they feel they are deriving.

Defining a User Fee

One of the most difficult issues associated with the recreation program funding issue is semantics: What is a user fee?

- Is a park entrance fee a user fee?
- Is a registration fee a user fee?
- Is a hunting license a user fee?
- Is an excise tax on recreation equipment a user fee?

The answer is that yes, these are in concept user fees but no, under existing law and regulations, they are not user fees. The Land and Water Conservation Fund Act of 1964 expressly differentiated between entrance fees and user fees, for example.

The American Recreation Coalition has reviewed current definitions of user fees and finds them to be unsuitable, for they fail to discriminate between user fees and specialized taxes; by definition, user fees should be a "closed loop" charge by which receipts are returned to benefit those paying the charge. ARC adopted the following position regarding user fees on March 19, 1981:

> "Recreational users [of public land and waters] ... can be expected to contribute to management costs through user charges, registration fees, fuel taxes and other direct and indirect means. Because many activities on public lands generate revenues in these ways today, existing payments to governments by recreationists and those providing recreation opportunities must be fully considered before additional taxes, fees or licenses are implemented. No government which manages public land can legitimately abrogate its resource stewardship responsibilities by denying public recreational opportunities in the name of fiscal constraints. Government agencies with land management responsibilities should either utilize

> mechanisms to derive revenues from recreational users to provide recreational opportunities or allow the private sector to assume this responsibility."

Currently, millions and millions of dollars are already being paid by recreationists to the federal government. In an initial report prepared for Senator James McClure in March of 1981, the Congressional Research Service identified annual recreation-related receipts of $146 million; this study failed to include substantial additional payments by other non-highway recreational activities (snowmobiling, off-road motorcycling and four-wheel drive activity) in federal fuel taxes and sharply increased fees implemented in 1982 for use of federal campgrounds and other sites. All of this income needs to be reflected in policy decisions on user fees and in the federal appropriation process. To do so, many of the existing definitions of and restrictions upon user fees need to be revised.

One key issue which requires Congressional decision is a threshold for programs designed to recover recreational costs. For many recreational activities, the cost of government support is extremely low per visitor day provided. For these programs, most cost-recovery programs would be economically unfeasible. Many of these activities are described as "dispersed recreation." At some point, however, the cost of recreation services does become a "special service" warranting a user charge. Defining that point, and the consequent decision to subsidize through general revenue allocation all lesser program costs, seems to be a legitimate Congressional role. One approach would be to assign federal agencies the responsibility for collecting a certain percentage (not more than 100 percent) of program costs from those recreational users receiving services greater than each agencies' average cost per recreation visitor day.

Implementing the User-Pay Alternative

Although user charges are now applied to many recreationists enjoying the public lands and incremental efforts to expand such charges are now in evidence, a clear-cut national policy decision in this area is needed to provide consistency across federal agencies. Such a national policy might embody the following principles:

- Federal recreation program costs need to be assessed accurately and reported to the Congress and the public. Today, no one knows the true costs of operating a federal campground, for example. Only when these costs are known can the costs of specialized services be recovered and alternatives -- including private sector operation and reduced levels of services -- be evaluated.

- Cost recovery strategies must be flexible. For some activities, entrance fees may be most efficient and equitable. For others, a recreation permit -- such as the duck stamp -- may be most effective. In other cases, excise taxes may be the optimal approach. In all cases, the affected interests must be consulted, for voluntary compliance with cost recovery strategy will be essential. Moreover, cost recovery strategies must be designed to reach users of federal lands and waters, not the public at large.

- A new Recreation Trust Fund should be created, designed to meet the maintenance and operating costs of federal recreation sites. All revenues collected in the form of fees, special permits, taxes and more levied against recreational users of the public lands should be placed into this fund. Subsidies of federal recreation upon which charges are not levied would be added to this fund, perhaps on a matching basis and perhaps from a revenue source such as OCS royalties.

Companion Measures

In addition to increased emphasis upon recreational user charges, the federal government can take several steps to assure continued high levels of recreation quality on the federal lands. First, it can expand its reliance upon the private sector as the direct provider on public lands under leases and permits. Current constraints on the length of such agreements and limits on what recreation services may be operated by the private sector -- campgrounds in national parks and national forests have traditionally been off-limits -- need to be carefully examined and revised.

Second, increased use of cooperative agreements with states, local units of government and non-profit organizations such as American Youth Hostels, Inc. can reduce the net cost of federal recreation programs. Boating facilities, snowmobile and nordic ski trails, motorcycle parks and other programs which depend upon public lands and waters can be operated by non-federal structures which currently collect fees, licenses or taxes, obviating the need for new federal revenues.

Summary

Recreation in America is an integral part of our nation's lifestyle. It is a healthy, healthful force in America's economy. Yet it faces the need for change, primarily because active, outdoor fun is heavily reliant upon our nation's public lands and structures and services upon those lands.

The most effective way to deal with budgetary duress at the federal, state and local levels is a combination of increased reliance upon recreational user charges, of expanded reliance upon the private sector and of further use of cooperative agreements with other government bodies. To facilitate this transition, a new federal recreation policy is needed, defining allowable user charge strategies and providing for specific levels of general revenue subsidies to federal recreation programs.

STATEMENT OF BARRY S. TINDALL, DIRECTOR OF PUBLIC AFFAIRS, NATIONAL RECREATION AND PARK ASSOCIATION

Mr. TINDALL. Thank you, Bill. Let me note for the record that I was asked to look specifically at State and local government experiences in the levying of fees and charges for different types of recreation and park experiences. Thus the data and information that I have to share with you will focus on the non-Federal types of park management.

Derrick has mentioned that there are any number of different types of public recreation delivery systems in the recreational parks area, and that diversity, in part, springs from a variety of authorities and public and private actions, many of which are hinged on contributions and continuation of revenue development activities.

The public parks and recreation manager at the Federal, State or local levels has to grapple with the revenue development situation because of these different authorities. The further challenge is one of considerable philosophical grappling, some of which have management overtones. That is generally based on the perception of many public park and recreation managers that park and recreation opportunities ought to be paid for or ought to be available from the general revenue activity, that is, the levying of taxes, and to charge again for a recreation experience somehow does a disservice to the payer.

Nonetheless, there are different notices and professional and personal forces working against one another. The numbers generally indicate that in the last 5 to 7 years there has been a fairly significant increase in both the rate and the amount of revenues developed from different types of fee and charge situations. Most of the change I suggest, and I think Derrick's observations generally support this suggestion, seem to have come at the non-Federal level. Even more of the change simply comes in the private sector where there seems to be a much better pricing mechanism at work.

Derrick mentioned a little bit on the definition of fees and charges. The earliest Federal fee that we were able to locate was a 1908 fee to enter Mount Rainier National Park. That year there were 117 permits sold for cars entering that park. We have been sticking it to cars ever since, and they have been sticking it to us ever since as far as parks and recreation experiences are concerned. I presume that situation will continue.

A few years later there were eight national parks that charged vehicle fees. It wasn't until 1962, however, that the park managers and others got together and tried to bring some kind of an order to the definition of user fees. In May of that year a revenue production facility committee of the American Institute of Park Executives was established. They came up with terminology and a set of definitions for these fees. There were seven categories. I will quickly mention those: Entrance fees, with charges made to enter a large park; admission fees, that is, fees to get into certain buildings, structures, and natural chambers; rental fees which were payment made for the privilege of exclusive use of tangible property; user fee charges made for the use of a facility for participation in activities or a fare for a controlled ride or activity; sales revenues, operation of stores, concessions, et cetera, license to permittees; express service fees; and charges made for supplying extraordinary articles, commodities, and activities and services. These are the seven categories that most professional park managers subscribe to at this time, and they are used by the Revenue Sources Management School jointly sponsored by my organization and North Carolina State University.

There is evidence that public park and recreation administrators, managers, and planners are increasingly looking, not to fees and charges per se as we have defined them to this point, but to the whole area of revenue development. In fact, this increase has generated a new professional service and a new employment area in the recreation management business. One such firm is the Revenue Consultants in Tennessee. A statement by their vice president really describes the trend in succinct terms as that person sees it. Charles Spears wrote in the last October issue of "Virginia Views" that the 1960's were years of easy budgets. "Operating capital budgets were as good as the imagination of the leader. The 1970's were years of change. Budgets started getting tighter and tighter. The 1980's may be labeled as the decade of financial self-determination."

The departments that cannot adjust to producing a higher percentage of their operating and capital budget will see their agency giving less and less service, or in some cases, disappear. I refer to that quote in our paper.

Fees and charges are not something that a public agency gets into in a hip pocket sort of venture. There is a considerable body of local statutes and ordinances, State statutes, in some cases Federal statutes, which control. Many local governments do not, in fact, have the authority to levy fees and charges for recreational opportunities. There is a public model for fees and charges, and we reference that in the paper. I will just mention the seven steps of that model.

The first phase is a statement of need. That makes the presumption that a program is needed, not whether you need a fee or charge, but the presumption is that the program is needed. The statement here on need is whether or not you need a fee or another revenue-generating charge to attach to that activity.

Phase two is a classification of recreational programs, including pricing alternatives.

Phase three is pricing alternatives.

Phase four is the valuation of pricing alternatives by service categories.

Phase five is acutal decisionmaking.

Phase six deals with the implementation factor. If any of you have been following the effort of the U.S. Coast Guard and others to implement a fee program for waterway users, they would do well by reading that particular portion of the paper.

Phase seven is reevaluation, something that we generally fail to do in recreation and park business.

There are also many other factors that control revenue development or are perceived by managers as a reason for getting into revenue development. One of those has nothing to do with the money, but rather is a means of controlling visitation. More than a few

States and some other levels of government have examined the potentials of limiting visitations through the use of a fee or a charge. That gets into a wide array of socioeconomic problems that many of you are familiar with.

Mr. **Reilly**. Would you wrap up?

Mr. **Tindall**. Thank you. Let me summarize.

Mr. **Reilly**. Yes, please.

Mr. **Tindall**. In terms of magnitude, it is important to reference State park systems. State park systems in 1981 had 618.1 million visits, roughly twice the number of visits to the national park system. Those systems generated a total of $197 million in revenue from operations. That is about 41.4 percent of their operating budgets for those States that were heavily into the revenue development business.

The greatest increase, that is average annual change, is in entrance and parking fees. Some States, and I believe New Hampshire is still in this category, attempt to generate 100 percent of their operating funds from revenue operations.

Local governments present a slightly different story. Local governments are retrieving anywhere from a low of 15 percent to a high of about 85 percent of their operating budgets from revenue development activities. Please note that I am referring to operating budgets not capital.

[The prepared statement of Mr. Tindall follows:]

DISCUSSION PAPER

Workshop on Land Protection and Management
Subcommittee on Public Lands and Reserved Water
U.S. Senate

Fees and Charges in Recreation and Parks
A Review of State and Local Government Action

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Fees and Charges in Recreation and Parks
A Review of State and Local Government Actions

The historical diversity of "authorities" by which public park and recreation areas have been established, operated and maintained has encouraged considerable attention to different strategies to obtain fiscal support. This condition, coupled with the too frequent labeling of public recreation opportunities as "unnecessary" has added another challenge to fiscal resource development. A further challenge applicable to revenue development through "fees and charges" is one with philosophical and management overtones; the idea held by many that recreation opportunities for all citizens should be supported by basic taxes. Thus, to charge again for recreation opportunities is not justified. Nonetheless, the 1975-1982 era has been one of considerable attitudinal and management change for policy makers, administrators and the public at large.

With this general scenario in mind, this paper will attempt to review the major aspects of that element of revenue development generally referred to as "fees and charges". Particular attention is given to recent actions by State and local governments. The reader is cautioned that this is an overview paper. It does not represent an exhaustive search of the literature or original research. Persons in policy and management positions who may be contemplating the introduction (or significant expansion) of a recreation fees/charge system are encouraged to review in depth the existing literature. This paper draws heavily on some of these references.

"Fees and Charges" Defined

Recreation management's use of "fees" dates to at least 1908 and the use of the automobile. In that year, a $5 automobile fee was instituted at Mount Ranier National Park (following the completion of a road to Nisqually Glacier); 117 permits were sold the first year. By 1915, eight national parks had a fee for automobile permits. It was 54 years later, in 1962, that recreation and park managers attempted to bring "order" to policy and management discussions about this aspect of revenue development. In May of that year, a "Revenue-Producing Facilities Committee" of the American Institute of Park Executive (now, in part, the National Recreation and Park Association) initiated a series of surveys and meetings to better define the terminology associated with fees and charges. The work of that group generally defined the parameters of "fees and charges" discussions for park policy and management interests today.[1] Seven "fee" categories were agreed to:

> Entrance fees: Charges made to enter a large park, botanical garden, zoological park, or other developed recreation resource. Areas are usually well-defined, but necessarily enclosed. The entrance is the user's first contact with the park.
>
> Admission fees: Charges made to enter a building, structure or natural chamber. Sites usually offer an exhibit, show, ceremony, performance, demonstration, or special equipment. Entry and exit are normally controlled. Examples include arenas, aquariums, caverns, historical buildings, and museums.

Rental fees: Payments made for the privilege of the exclusive use of tangible property of any kind. The fee gives the patron the right of enjoying all of the advantages that may occur from the use of this property. Examples include archery equipment, bicycles, boats, cabins, canoes, parking, toilets, tents, and garden plots, among many types of property.

User fees: Charges made for the use of a facility or for participation in an activity or a fare for a controlled ride. The patron usually participates in and enjoys the privilege simultaneously with others, thus, the difference between this fee and rental fees. Examples include ice and roller rinks, ski lifts, golf driving ranges, and similar facilities.

Sales revenues: This category includes revenues obtained from the operation of refectories, stores, concessions, restaurants and similar facilities, and from the sale of merchandise or other property. The unconditional ownership of the item must pass from the seller to buyer with each sale.

License and permit fees: These are synonymous terms. It is a written acknowledgement of consent to engage in some lawful activity without command. It is normally issued by a government division and ordinarily involves permission to perform an action. It seldom grants authority to occupied space or to used property.

Special service fees: Charges made for supplying extraordinary articles, commodities, activities, or services as a public accomodation. Examples include franchise fees for team competition, social activities, equipment storage, communication and lighting equipment, instruction for organized events, materials for arts, summer camps, boat-launch facilities, and other charges for personal services.

These fee categories are used by the Revenue Sources Management School, jointly sponsored by the National Recreation and Park Association and North Carolina State University's Department of Recreation Resources Administration.

Policy and Management Concerns: Recent and Historical Perspectives

While there are notable exceptions, the issue of "fees and charges" (and in a larger context, revenue development generally) in parks and recreation, has historically been viewed with mixed professional and personal reaction. There is increasing evidence, however, that public park and recreation administrators, managers, planners, and policy makers are increasingly looking to "revenue development" to continue or expand recreation opportunities, as opposed to seeking additional support from the general tax base.

A recent statement by Charles R. Spears, vice president and general manager of Revenue Consultants, Inc.,[2] is indicative of what many perceive as an emerging view. Spears noted:

> The 1960's were years of easy budgets. Operating and capital budgets were as good as the imagination of the leaders. The 1970's were years of change. Budgets started getting tighter and tighter. The 1980's may be labeled as the decade of financial self-determination. The departments that can not adjust to producing a higher percentage of their operating and capital budgets will see their agencies giving less and less service, or in some cases disappear.
>
> What can you do? First of all, park and recreation administrators must become actors instead of reactors. You must look at every facility and activity as a business. No longer can you afford the luxury of adding facilities and programs only because an individual or group wants it. It must not only be seen as a need, but also an economic self-supporter. Budgets will be expected, more and more, to be self-generated.
>
> Each new activity will be required to prove by a pro-forma budget its ability to pay not only its direct costs, but overhead as well. Included in the overhead will be administrative costs and fringe benefits. Fringe benefits can run as high as 50% of personnel cost.
>
> Most new facilities will be required to have an economic feasibility study conducted to give outside expertise on the economic ramifications. Major facilities will be required to produce revenues to not only pay expenses, but also debt service. The one most important factor

> in planning of facilities today is complexing. More than one activity must be put together in order to use personnel in the most efficient and effective manner.

This statement notwithstanding, the issue of "fees and charges" (and, in a larger context, revenue development in general) has traditionally evoked strong response from recreation managers.

Public agencies considering the adoption or continuation of a fees and charges strategy must consider several factors, not the least of which is their particular government's legal authority to charge revenue-producing fees and charges.[3] Once determined to proceed, individuals versed in revenue development programs generally suggest a seven-step cycle to examine fee opportunities.[4] See especially Public Policy Model For Charges and Fees.

Phase one of this cycle is referred to as a "statement of need." This phase of the assessment presumes that the agency has determined that existing (or proposed) programs are essential to the comprehensive recreation needs of the population to be served. Use of the term "need", therefore, refers to whether or not the fee should be charged, not the program itself. Invariably, a "statement of philosophy" will emerge as will a "policy of efficiency," the latter will determine the highest profit possible to sustain that recreation activity or facility without negatively affecting demand.

Phase two of the cycle requires the classification of recreation programs and services into "program and service categories." These categories allow consideration of pricing alternatives. Program categories might include instruction, tournaments and contests, league programs, and special activities, among others.

Phase three of the cycle requires consideration of the "pricing alternative." A general range of considerations here would include whether some activities ought to be totally subsidized, whether some should "break even," and whether others should recover the full cost plus "profit."

Phase four, "pricing alternatives evaluated by program and service categories," addresses a number of criteria which, when applied to program categories, serves to evaluate various pricing alternatives.

Phase five includes the actual decision on which pricing alternative to select for which program or service category.

Phase six, "implementation factors," includes the development of strategies to communicate the policy decisions to staff, other governmental units, and the public.

Phase seven, "reevaluation," involves continuous observation, monitoring, measuring, and evaluation, especially during the early implementation phase of a fee/charge program. Recreation and park management professionals strongly recommend that fees and charges policies be continuously evaluated to serve both the principles of equity and efficiency.

Other Aspects and Objectives of Fees and Charges

In addition to the revenue development aspects of "fees and charges," in certain instances they have been perceived as a means of controlling visitation to maintain either a certain type of recreation experience or the physical resource itself. In research on this,[5] Kenneth B. Goldin found that "without limitation, summer usage may result in uniformally congested parks. Limitations can reduce congestion and restore diversity of both secluded and moderately used areas. Admitting only users who value parks highly may be achieved by pricing and equivalent rules, and not by a first-come-first-serve approach." Goldin found that "prices which control congestion are also prices which cover costs." In a note on the implementation of fee programs, Goldin suggested that implementation of such programs may bring with it certain questions of "efficiency." He noted that "public agencies rarely reward efficiency, and may find efficiency analysis of little interest."

In a related study,[6] H. J. Vaux, Jr. studied the distribution of income among wilderness users, with particular attention to "rationing schemes." Vaux found that increasing use pressures on the nation's wilderness areas "must be tempered if continuing increases in congestion and environmental deterioration are to be avoided." Vaux noted that "the adoption of rationing schemes designed to restrict the intensity of wilderness use is likely to become widespread in the future. (However), one such scheme, the imposition of a wilderness use fee, is often attacked as a measure discriminating against the relatively poor." Restricting his research to randomly selected wilderness areas in California, Vaux found that incomes in excess of $12,000 are predominant among wilderness users. With the exception of students, who appear to have understated their incomes, a disproportionately small group of low income people utilize wilderness areas. High income people represent a disproportionately large group of wilderness users. Subsidy inherent in federal assumption of cost to mitigate congestion and environmental deterioration will benefit proportionately few low income people. Such a subsidy is not likely to be an effective means of economically upgrading low income people.

While care must be exercised in applying these data to wilderness areas in other regions or to those to recreate in wilderness areas in the fall or winter, it is concluded that imposition of wilderness use fees would not tend to discriminate against the poor." Also, the author cautioned that the research was restricted to wilderness recreation during the summer months. Wilderness users in the fall tend to be oriented towards other distinct "goods," thus, it is likely that economic characteristics of those consumers will also be distinct, the author said.

In another study related to the generation of local income from users of a rural public park,[7] G. E. Frick and C. T. K. Ching hypothesized that income generated in the local area by park users is nominal. Their empirical results, related only to Pawtuckaway State Park, New Hampshire, gave support to this hypothesis. They found "local income generated by 125,000 park users was equivalent to that which would be expected from 12 permanent resident families. The authors noted, however, that there are other monetary effects associated with a public recreation facility which were not appraised. For example, the effect of the park in creating service jobs and park maintenance and management was not considered. Also, the effects of the park on the tax base in the local government expenditures of adjacent communities were not analyzed. These factors as well as others should be considered in the assessment of the total economic impact on local economies due to the establishment of a public park.

Other research by Boris W. Becker[8] examined the "administrative dilemma" faced in the "pricing" of educational-recreational facilities. Becker's research noted that educational and recreational facilities throughout the country were facing serious financial problems in the mid-1950's, "even though demand for their services seemed constantly rising." The outcome, Becker noted, varied from deterioration and overcrowding to closure of the facility. Becker's research focused on the impact of user fees and the potential solution to the problem. Becker found that "without some increased reliance on user fees.... more and more educational and recreational facilities will find themselves in a deepening spiral of overcrowding and underfinancing...."

Revenue Development Patterns: The States

State park systems play a critical role in meeting our national objective of quality recreation experiences. The number and diversity of state-administered areas and visitation rates also present important revenue development opportunites. In the 1980-81 reporting year, state parks and associated areas hosted an estimated 618.1 million visits.

While considerable review and interpretation work remains to be completed, certain data available from the states in "raw" form appears to indicate a significant increase in the incidence and level of revenues generated from state park operations. This observation is based, in part, on data gathered by the National Association of State Park Directors.[9] The following tables present an overview of selected state data.

TABLE 1

Revenue from Operations, State Park Systems, 1962-1980/81
(millions of dollars)

1962	1967	1970	1975	1980/81
$26.5	$50.0	$70.9	$115.4	$197.1

TABLE 2

Revenue from Operations, State Park Systems, 1975-1980/81
(millions of dollars)

	1975	1980/81	Average Annual % Change**
TOTAL	$115.4	$197.1*	14.2%
Operated facilities	75.2	85.8	2.8
Concessions	10.5	13.9	6.5
Entrance and parking fees	20.3	39.7	19.1
Other	9.5	53.7	9.3

*Subtotals do not add due to rounding.
**Average annual change calculated by $\frac{(1980-1975) \div 1975}{5}$

The report contains additional data to give the reader a more detailed view of revenue development from state park operations. For instance, of the 50 states, 23 reported "facility generated income" as a source of revenue for their operating budgets. Twenty states reported fees from persons entering by foot; 28 states reported revenue from annual vehicle passes; 8 reported parking fees; 41 reported campsite rental fees for Class A sites; 28 reported fees from cabin and cottage rentals; 46 reported revenue from concessions operations; 20 reported revenue from aquatic facilities for their operating budgets. Only two states, Colorado and Missouri, reported "facility generated income" as a revenue source for their fixed capital budgets.

Calculations to determine what percentage of the total operating budget was derived from facility generated income revealed the following for selected states: Alabama, 60%; Arizona, 96%; California, 23%; Georgia, 46%; Illinois, 4%; Iowa, 12%; Louisiana, 3%; Nebraska, 37%; New Hampshire, 100%; Ohio, 24%; Oregon, 32%; Tennessee, 55%; Texas, 44%; Washington, 11%; West Virginia, 69%; Wisconsin, 47%. On average, the states noted above derived 41.4% of their operating budgets from the general category of facility generated income. (Note: The general category of facility generated income consists of several different references, some specific to a single state. These references include, among others: park receipts, general revenue, park revenue programs, agency receipts, self-generated funds, parking fees, concessions, facility rentals, miscellaneous revenue, field fees, park operating receipts, local general revenue, fees and permits.)

While only 23 states reported "facility generated income," 49 of the states reported at least some revenue from all sources.

Recent Local Government Experiences and Activities

While specific data to precisely indicate a particular long term trend in local government use of fees and charges appears lacking, there are strong signals that suggest an upward trend in the assessment of fees and charges as a local government revenue source. Some of these indicators include increased interest in examples of revised or new local public policies which deal with the issue of recreation fees; the publication of (and demand for specialized literature on this subject; and, attendance at special management training events. Specific examples of the latter include high participation rates in the Revenue Sources Management School jointly sponsored by the National Recreation and Park Association and North Carolina State University (convened annually since 1965) and other "revenue" workshops and sessions convened by the National Recreation and Park Association regional offices and others. Additionally, there is evidence of a considerable number of internal management reviews of revenue development potentials by local recreation and park staff, as well as general sharing of recreation revenue policy and fee schedule information among managers.

The most recent comprehensive national assessment of local government fees and charges information available to the author was conducted in 1979 by researchers at the Leisure Research Institute at Indiana University.[10] Two-hundred forty directors of municipal park and recreation systems were selected randomly from 400 departments nationwide serving populations of 50,000 or more. Fifty-four percent of the directors responded.

According to the Institute:

Eighty-two percent of the departments reported increases in user fees in 1979 compared to 1978, with 16% having considerable increases and 66% having slight increases. 85% of the departments expected increases in user fees for 1980. Approximately 8% experienced decreases in user fees in 1979 with 10% reporting no change. Only 2% of the departments anticipated decreases in user fees for 1980.

Departments in the Pacific coast states...experienced disproportionate increases in user fees from 1978 to 1979. Approximately one-half (47.6%) reported considerable increases compared to 23.8% of the departments in the Southeast, 14.3% in the Western region, 9.5% in the Great Lakes region, and 4.8% in the Northeast.

A majority of the directors (57.6%) reported an increase in the number of programs supported by user fees in 1979 compared to 1978, with 42% indicating no change. The number of participants in user fee programs increased in two-thirds of the departments.

One-half (49.2%) of the directors classified public reaction to user fees as favorable, 11% as unfavorable, and 40% as being neutral.

The three factors which were considered most in establishment of user fees were cost per participant (83.5%), age of participant (69.3%), and residence of participant (46.5%). Facilities receiving greatest support from user fees were golf courses (40.9%), recreation centers (17.3%), and outdoor swimming pools (12.7%). Sports and athletics was the major program area that received greatest support from user fees (77.9%), with cultural arts being second (15%).

The average percentage of budget revenues comprised of user fees was 19.5% in 1978, 22% in 1979, with projections of 22.5% for 1980. Departments in the (National Recreation and Park Association) Pacific region reported the greatest percentages for 1979 and 1980, 26.5% and 28.0% respectively. Overall, data indicate that a large number of departments increased user fees (82%) in 1979, and even more (85%) anticipate increases in 1980; however, the impact of these increases on total budget revenues appears slight with a gain of only three points in the mean percentage of revenues comprised of user fees.

Conclusion

The assessment of fees and charges for both general and special services is increasingly becoming an integral part of public recreation and park management. This phenomenon is having, and will have more, ramifications for the scope and frequency of recreation programs; for the types of skills and expertise required by public management systems; for the ultimate perception of recreation sites and facilities as a basic public necessity; and for the type of political and public support enjoyed by recreation and park systems.

The implementation of a "fees and charges" scheme is not a "quick fix" to continuing fiscal demands, but there are important opportunities. As with most other aspects of recreation and park management, a potential "fees and charges" scheme must be measured against the broad objectives and capabilities of the park and recreation system.

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Mr. REILLY. Thank you, Barry. We will turn now to the respondents, to first Mr. Lloyd Irland, State economist from Maine.

STATEMENT OF LLOYD IRLAND, STATE ECONOMIST, STATE OF MAINE

Mr. IRLAND. Thank you, Bill. I want to praise the two papers. They were very beautiful, and I think they will be an important part of the publication package that comes out.

I call the subject matter Davey Crockett economics because it deals with the perception that a lot of people have that Davey Crockett can go hunting and fishing in the woods free. He can have all his recreation supplied by Mother Nature. I feel we should do it too, that recreation ought to be a free good, and so it is for that reason I call this general area Davey Crockett economics.

Many people don't know what parks and recreational programs actually are. I became curious about one particular kind of recreational program. I am more a wild lands manager but I did a little summary a few years ago on the costs of managing back-country areas in the State of Maine which has some fairly spectacular places. Some of the figures are surprising. I might explain some of them to you.

The University of Maine has a study of park and recreation costs underway, including costs per user and costs per year, that will develop much more precise figures. This study is responsive to what Derrick commented. Until the study is done, we don't really know what these activities are costing us.

There are a couple of important aspects to costs of public recreation and to pricing. One of them is that there seems to be a strong tendency toward gold plating of facilities and possibly of service. This tendency is due partly to the fact that administrator's building maintenance is never going to be done properly so you better build something very solidly so you will have low maintenance, and also to the desire to put a good foot forward and have really fine facilities. I am not saying it is bad, but there is a strong tendency to do gold plating. The erosion of sovereign immunity in some States may have had something to do with this in the past.

Cost accounting is almost being done for bean counting purposes—keeping track of the paper or making sure a pound of salt or gravel is applied to one park and not another park. But it is not really used for management or determining true costs. Of course, as I don't need to tell you, pricing in parks and public recreation areas is a politically sensitive proposition. I was interested in the last remarks here about capital costs because as a reflection of our general public practices for managing our infrastructure, whatever the purpose, we don't think very much about depreciation allowances and recovery of capital costs. Maybe for public recreation we shouldn't, but we still should know what those are.

A lot of park systems that went through a major series of construction projects are just beginning to get to the point where the cracks and the leaks show up. The real maintenance requirements are starting to hit them and they don't know what those are.

A couple of other points I would like to make about objectives here in pricing and in revenue policy—the first one is, obviously, revenue need to be generated to cover operation and maintenance. Derrick remarked in his paper about how simple equity plus program effectiveness requires that we receive more of our operating costs from the users. If you look at the wilderness waterway which is enjoyed by about 10,000 people a year, one third of the costs are recovered from the users. I submit people who can haul themselves out to the backwoods of Maine and take a week off don't need to be subsidized in that manner. Balstard State Park is more heavily subsidized and the Federal areas are fully subsidized.

Revenue is equal to zero in a Federal wilderness area, so we definitely have to have revenue to carry on and we should be thinking about funding depreciation charges. Where appropriate, we should be thinking about using pricing for what I call peak shaving, to borrow a term from the utility companies. Most of our developed recreation areas use most of their use on about 10 to 30 days out of every year. If we can do peak shaving with pricing, that is worth exploring. Whether or not we can manage congestion effectively, it needs to be tailored to local needs. Certainly there is that possibility in some situations.

I think an important thing we need to be looking at is simply the elimination of unnecessary subsidies such as I spoke of in the Allagash. I don't know why the general taxpayers ought to subsidize people who go canoeing down the Allagash. I don't care how poor they might be or anything. I just don't think there is any justification for that kind of subsidy. My friends in the conservation movement, the Wilderness Society, Sierra Club, are busily innundating people like Senator Wallop and some of you with long, tedious streams of statistics and impassioned arguments purporting to demonstrate how the timber industry is being subsidized by Federal policy, but they always want to change the subject very fast when I start waving my blue sheet about wilderness canoeists are being subsidized. They want to change the subject very fast. I would hope that consideration of this issue might be sparked by these two papers, and that subsidies going to certain kinds of recreational users would be examined.

It is certainly true that the most successful programs we see in outdoor recreation are ones which have a high component of paying by users—the snowmobile programs, the fish and game program, these other programs where the beneficiaries are in fact contributing through dedicated taxes that they have sometimes lobbied for themselves. Those are the ones where you see stability, growth and real success. I think this is a real lesson that could be applied more broadly.

Thanks.

[Material supplied by Mr. Irland follows:]

Technical Report No. 5

Bureau of Parks and Recreation
DEPARTMENT OF CONSERVATION
State House Station 22
Augusta, Maine 04333

December, 1980

Prepared by:
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207/289-3061

COSTS OF MANAGING BACKCOUNTRY RECREATION AREAS IN MAINE, 1978

ABSTRACT

In 1978, the annual costs of managing backcountry recreation – hiking, canoeing, and primitive camping – in Maine ranged from $3 to $5 per visitor day, or $2.50 to $6 per acre. These costs amount to nearly one million dollars per year in the 4 major Maine wildland units studied. Recreationists pay nothing to use federal areas, about one-third of direct cost in the State-managed areas, and about two-thirds of direct costs for North Maine Woods, a private organization. A policy decision will be required on what portion of recreation management and land opportunity costs should be paid by recreationists. Entrance fees, taxes, or annual backcountry use stamps could be used.

Some recreation planners and researchers have predicted escalating demands for backcountry recreation. Recent trends in New England do not support such predictions (Wagner and Spencer, 1979). However this may be, federal, state and private recreation organizations face rising backlogs of maintenance and restoration work in most backcountry areas. The staff requirements of proper backcountry recreation management are now becoming clear. These needs, however, encounter the stark facts that personnel and budgets for the responsible agencies face severe pressure from inflation and competing public needs.

To assist administrators in assessing budget needs, in comparing their costs with other areas, and in analyzing policy questions, this paper presents rough cost estimates for wildland recreation management in Maine in the late 1970's.

Several previous studies have analyzed the costs of providing forest recreation. One of the earliest surveys of forest recreation costs was by Sieker (1959), who also supplied an intelligent review of policy issues. Manthy and Tucker (1972) conducted a detailed cost analysis of camping, hunting and fishing supply costs in Michigan. They found that primitive camping sites cost $1.02 per visitor day to construct and operate, with the bulk of the costs due to operating costs. Tyre (1975), studied southern national forest recreation in the early 1970's. He found that family campgrounds cost $1.28 per visitor day; recreation trails cost $2.29 per visitor day, and the one wilderness sampled cost $6.03 per visitor day. The major portion of cost for the wilderness was opportunity cost of land. Guldin (1980) studied four small wilderness areas in New England. In a detailed economic analysis, he considered capital and operating costs and opportunity costs. He found that opportunity costs loomed large in the totals, which ranged from $1.91 per visitor day (Great Gulf) to $17.22 per visitor day (Bristol Cliffs), averaging $3.79. Guldin argued that these costs are much larger than is commonly assumed, and that they raise serious questions of land use allocation as well as equity in recovering costs from beneficiaries.*

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* Additional studies of developed forest recreation costs are Argow and Fedkiw, 1963; Gibbs, Queirolo, and Lomnicki, Gibbs and VanHees, and Strauss, 1979. The major treatises in the field include little or nothing on the costs of dispersed recreation; Clawson & Knetsch, 1964; Brockmann, 1979; Hughes & Lloyd, 1977; Robinson, 1976; Roth Assoc., 1969; Hendee, Stankey, and Lucas, 1979.

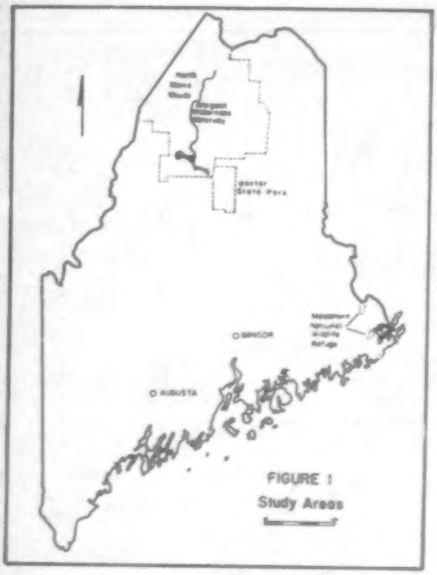

FIGURE 1
Study Areas

STUDY AREAS

The study areas are four distinctively different backcountry recreation areas in Maine (Fig. 1). They represent a diversity of ownership and management objectives. They all receive heavy use for hiking, canoeing, hunting and fishing, and primitive camping. Several enjoy regional and national reputations. Trends in use during the 1970's have been mixed (Wagner and Spencer, 1979).

Baxter State Park. Baxter Park is a 200,000 acre wilderness in north central Maine. It was established through gifts to the State by the late Governor Percival P. Baxter. It is administered by the Baxter Park Authority, which acts as trustee for the citizens of the State (Baxter Park Authority, 1978).

The scenic centerpiece of the Park, and the motive for its creation, is Mt. Katahdin, the northern terminus of the Appalachian Trail. The Park serves trail hikers, campers who use motorized access to developed campsites, day hikers, hunters and fishermen, and other dispersed recreationists.

Moosehorn National Wildlife Refuge. The Moosehorn Refuge was established by the Fish and Wildlife Service in 1937, as a way station for woodcock. It consists of two units totaling 22,655 acres. It contains low rolling terrain with considerable marshy area and brushy woodland. Active wildlife management is underway. The refuge includes two dedicated wilderness areas totaling 7,462 acres. Recreational use is considerable, including hunting and day use (U.S. Fish and Wildlife Service, 1971).

North Maine Woods. North Maine Woods manages 2.5 million acres of forest land in northern Maine for 30 different owners, with only about 2% in public ownership. The objectives of the organization are to maintain primitive recreation sites, to register visitors using privately owned road systems, and to assist in controlling public use for fire control and other purposes. This vast region has virtually no permanent populations, no public roads and no local government.

Recreational use consists of fishing, hunting, canoeing and camping, with access mostly by air or by vehicle over private roads. In the 1970's, visitor use has fluctuated from 43,000 to about 56,000 visitors per season, with a rising trend. The organization obtains about 2/3 of its income from visitor fees, with the balance from dues paid by member landowners.

Allagash Wilderness Waterway. The Allagash Wilderness Waterway was created by State law in 1966, following a long federal-state study effort. It was given federal Wild

TABLE 1. ANNUAL DIRECT MANAGEMENT COSTS
(Opportunity costs not included)

AREA AND YEAR AVERAGE	ACREAGE	ANNUAL MANAGEMENT COSTS	VISITOR DAYS	COST PER VISITOR DAY	COST PER ACRE
4 New England Wilderness areas, FY 1977.[1]	42,000 (Total 4 areas)	$191,300	50,414	$3.79	$4.54
Baxter State Park CY 1978	200,000	534,000	107,453	4.98	2.66
Allagash Wilderness Waterway FY 1977-78	23,000	135,000	45,000	3.00	5.95
Moosehorn NWR CY 1978	22,665	80,000[2]	24,308[3]	3.29[3]	3.53
North Maine Woods. 1978	2,500,000	207,000	152,430	1.36	.08

1. Lye Brook, Bristol Cliffs, Great Gulf, Presidential - Dry River. Data from Guldin (1979).
2. Costs excluding wildlife habitat manipulation outlays.
3. Number of visits - many of short duration and hence not comparable with other data in these columns.

TABLE 2. THE ROLE OF OPPORTUNITY COSTS

AREA AND YEAR	ANNUAL OPERATING COSTS	ANNUAL OPPORTUNITY COSTS*	TOTAL
Baxter Park CY 1978	$533,834	$3,000,000	$3,533,834
Allagash Waterway FY 77-78	$134,978	$345,000**	$479,978
Moosehorn Refuge	$80,000	$340,000	$420,00

* Land valued at $150 acre; opportunity cost assumed to be equal to 10% annual interest on market value of land.

** Any increased costs attributable to regulation of private logging in the one mile corridor are not included.

River Status in 1970. The 92-mile corridor is protected by a state-owned land strip of about 23,000 acres and a one mile corridor on either side within which private logging is regulated to reduce aesthetic disturbance and erosion. The Waterway contains 72 campsites, managed by a staff of 3 permanent and 13 seasonal employees. The level of summer use of the Waterway increased from 25,000 to 50,000 visitor-days between 1966 and 1973; it averaged 45,000 visitor-days between 1974 and 1979. The number of persons visiting annually has been stable since 1972 at 8 to 10 thousand. Winter use is limited to snowmobiling and ice fishing, counts of which are unavailable (Anon., 1980; Cieslinski, 1980).

COSTS

The direct cash costs of supplying backcountry recreation in Maine are substantial (Table 1). Costs range from $1.36 per visitor day for an extensive primitive vehicular campsite system to about $5.00 per visitor day for Baxter State Park, which also receives high vehicular traffic. On a per acre basis, the costs vary widely. The lowest are for the North Maine Woods system, whose sites are dispersed over a vast 2.5 million acre forest landscape.

The cost data employed here were obtained from the managers of the areas studied. They are based upon accounting records kept for budget and control purposes, and not on carefully constructed economic analyses. They are rough estimates only. The data cannot be assumed to be strictly comparable from area to area. Because of the relatively low wage levels prevailing in Maine, and the fact that differing degrees of differed maintenance exist on these areas, comparisons with other areas of the country may be misleading. These figures lump together expenditures on policing, cleanup, trail and road maintenance, and other management functions. Finally, they do not account for depreciation on past capital outlays.

In addition, these are relatively small areas. They are larger than the areas studied by Guldin, but smaller than those in western states. Cost comparisons should take size, intensity of use per acre, and other variables into account. Using these figures to study costs in relation to acreage alone is not justified.

Prominent costs of supplying wilderness recreation are land use opportunity costs. These are the economic values, or opportunities, foregone to manage an area as a wilderness. There are several ways to estimate total opportunity costs of a wilderness area. The method of residual value appraisal has often been applied (Merriam, 1964; Outdoor Recreation

TABLE 3. REVENUES AND COSTS

AREA	COSTS	REVENUES	REVENUE/COST
4 N.F. Wilderness Areas in New England	$191,300	-	-
Baxter State Park	534,000	$146,000*	.27
Allagash Wilderness Waterway	135,000	45,000	.33
Moosehorn NWR	80,000	-	-
North Maine Woods	207,000	142,000	.68

* User fees only. The park receives about 3/5 of its annual income in the form of revenues from trusts created by Governor Baxter to fund park management.

Resources Review Comm., 1963: Jones, et al, 1978; McKillop, 1978; Beardsley, et al, 1977). As an example, Guldin (1980) estimated for the Lye Brook Wilderness that direct management costs were $36,774, capital costs (annualized) were $26,876, and timber opportunity cost (also annualized) was $19,573. Alternatively, opportunity cost could be viewed as the annual interest charge on the current market value of the property, inferred from sales of similar land nearby. For small tracts such an approach might be fully satisfactory, as a method of stating a broad estimate for opportunity cost. The latter procedure is used in Table 2, which shows that opportunity costs are a large part of total cost of managing wilderness areas.

IMPLICATIONS

Providing backcountry recreation in Maine entails substantial direct budgetary costs for land managing agencies. It is fair to say that these costs amount to about $3 to $5 per visitor day, or about $2.50 to $6.00 per acre per year, for the typical small area. Annual outlays for backcountry management are roughly $1 million per year in the 4 study areas. Since these costs are largely for personnel, they will rise rapidly with inflation in the years ahead. Since some areas may not be currently keeping up with trail deterioration and building maintenance now, severe financial pressures are in prospect.

The cost estimates reported here are crude and should not be considered precise estimates of true economic costs, but they are consistent with more careful estimates made on nearby federal areas (Guldin, 1980). They indicate that the question of higher user fees for backcountry recreation will become increasingly important in the future.

Higher contributions to backcountry management costs should be sought from the recreational users. There are three major reasons. First, recreationists in the backwoods are a minority who do not need to be subsidized by the general taxpayer. Second, the maintenance and protection needs of these areas are not now being met by agency appropriations. The only source of expanded funding is the users who benefit directly from the management programs. This approach has been used with great success by hunters, fishermen, and snowmobilers. Finally, pricing backcountry recreation below costs artificially encourages use and contributes to congestion. As a practical matter, however, we do not know how much use would decline if full-cost pricing were used.

Evidence suggests that recreationists are prepared to pay higher user fees for most outdoor recreation activities (Economics Research Associates, 1976). A recent report by the U.S. General Accounting Office (1980) urges federal agencies to make greater use of user fees. Guldin (1979) reviews some of the practical problems. A number of practical options such as entrance fees, equipment, taxes, and wilderness stamps are available. The recreation economics community and public land administrators should explore all of the options thoroughly.

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Mr. **Reilly**. Thank you. Ms. Helen Foxwell, Kampgrounds of America.

STATEMENT OF HELEN FOXWELL, KAMPGROUNDS OF AMERICA

Ms. **Foxwell**. Thank you, Mr. Moderator. Before I begin I would like to give you a brief orientation on the background of the organization that I represent, and then just a comment on my personal background.

Kampgrounds of America within the private sector is the largest contributor of campgrounds for public recreation. There are 670 plus campgrounds within the Nation, and an additional 57 in Canada, making out the total of over 100,000 campsites, so they do come from a qualified position to examine user fees and charges. There are approximately 20 years of experience under their auspices.

Personally, I own one of their individual franchises in the Maryland area just outside the District line. Last year, our facility in its fourth year of operation served over 70,000 people that were recreating in this area. I am accustomed to looking at the bottom line, the P&L, and trying to avoid the red ink and so my orientation obviously would be on a positive side for user fees and charges.

Today my comments are in behalf of the organization of Kampgrounds of America and also the Campground Owners Association that individually own these franchises.

I might say that within the organization all but 13 of the campgrounds are owned by private individuals.

In terms of admissions fees, we would speak positively. We do believe that admission fees should be charged at all of the national facilities with the exception of the day or urban facilities. We also feel that it is important to recognize that these fees are based on the number and ages of people that are using the facilities and to also reflect the value and the quality of the facility that is being used. I suppose that comes from our orientation and our charge structure within the campground system.

We feel that the days of Federal and State governments being able to provide recreational facilities and services at little or no charge are passing as a result of the tremendous economic pressure and the need for the public funds that are so limited. User fees seem just and appropriate. Those who would use specially constructed facilities or services provided on public lands should expect to pay for the privilege. The cost of constructing such facilities such as boat ramps, arenas, campgrounds, and golf courses should be borne by those who use them and not the population at large.

One personal comment is that it is inconceivable to me that you could base a fee structure on only the cost of operating, repair, and maintenance, and not also look at the amortization of the cost of the facility. In consideration of the fees, my personal bias is based on looking at the P&L statements every day.

I concur with Mr. Crandall, and I think his trust fund concept is a very plausible one. It appears to our organization that the funds that are received from these facilities should be dedicated back to the facility for their operation. To divert those moneys to other uses would eventually relegate recreation to a very low priority. Perhaps it already is, and if so, over time both the quantity and quality of the recreational experience will deteriorate.

Perhaps this position represents a departure from what we as Americans have come to expect over the years, but I personally feel, as does our organization, that the time today is different, and that operating deficits of the various governmental bodies grow and threaten the very fabric of recreation.

Now would seem an appropriate time for the various agencies to look at the private sector to provide some of the recreational services and facilities offered on public land. I would suggest that either as a concessionaire or possibly as a consultant, an organization such as Kampgrounds of America has a tremendous amount of expertise to offer to the public sector. We believe that recreation is essential to our existence as Americans, but let those who use the public lands shoulder more of the burden of the cost when there are so many priorities in competition for the public funds. I personally appreciate so much the opportunity to speak in a forum like this and to be able to present the private sector's opinions about a very important subject.

Thank you.

[The prepared statement of Ms. Foxwell follows:]

KAMPGROUNDS OF AMERICA is the nation's largest provider of campgrounds. There are more than 670 KOA Kampgrounds throughout the United States plus 56 in Canada . . . with a total of more than 100,000 campsites in the system. All but thirteen are operated by individual franchisees.

Today, I speak in behalf of both the franchisor and the franchisees of the KOA system.

Our position on user fees and the charges is as follows:

1. Admission fees:

   We believe admission fees should be charged for all but day use, urban facilities. Such admission fees should be based on the number and ages of people in the party and reflect the value and quality of the facilities being visited. Many of the same people who travel to visit national and state parks think nothing of paying $5.00 or more per person for admission to amusement parks or other attractions and can afford to pay a reasonable fee. Normally, such a fee would account for but a small fraction of the total cost of their outing.

The days of our federal and state governments being able to afford to provide recreational facilities and services at little or no charge are passing as a result of more pressing and more basic needs for the limited number of public funds available. There will be no better time or more willingness on the part of the people to understand and accept such a change than in the midst of the current economic recession.

2. User fees:

   In a democracy such as ours, and under current economic conditions, user fees seem just and appropriate. Those who use specially constructed facilities or services provided on public lands should expect to pay for the privilege. The cost of constructing such facilities as boat launching ramps, marinas, campgrounds, golf courses, etc. should be borne by those who use them and not the population at large.

Such user fees should reflect at least 75% of the cost of providing the facilities or services. (Our definition of cost would include amortization of the construction cost, as well as operating, repair and maintenance costs.)

3. Dedicated funds:
   It seems to us to be just and equitable that monies collected for the entrance to public lands and for the use of the facilities thereon should be dedicated to maintaining and operating those lands and facilities. To divert such monies to other uses will eventually relegate recreation to a very low priority in times of budget stress and, over time, result in the deterioration of both the quality of the recreational experience and the quality of the facilities.

These positions represent a departure from what Americans have become accustomed to over the years. But these are not normal times. Operating deficits of various governmental bodies grow each day and threaten the social and economic fabric of our society. People have come to realize that there is no more free lunch in either the public or private sector of our society.

Now would seem an appropriate time for various governmental agencies to look to the private sector to provide some of the recreational services and facilities offered on public lands. Kampgrounds of America stand ready to assist on either a consulting or a concessionaire basis.

Recreation is essential to our existance. But let those who use public lands shoulder more of the burden of cost when there are higher priorities in the competition for public funds.

Thank you for this opportunity to present our views.

Mr. REILLY. Thank you. Mr. William Hopkins, department of natural resources for the State of Delaware representing the National Association of State Outdoor Recreation Liaison Officials.

STATEMENT OF WILLIAM HOPKINS, DEPARTMENT OF NATURAL RESOURCES, STATE OF DELAWARE, REPRESENTING THE NATIONAL ASSOCIATION OF STATE OUTDOOR RECREATION LIAISON OFFICIALS

Mr. HOPKINS. Thank you. Our association administers the Land and Water Conservation Fund programs throughout the Nation, and is responsible for the State conference of outdoor recreation planning efforts within those States.

As you all know, we are having to struggle with no funding in the Land and Water Conservation Funds. We are still hopeful, optimistic, that these funds will come about.

We all, as an association and also within our own State park programs, in support of the user fee concept. The State and local agencies have been in existence for many years.

I would like to talk about the State of Delaware where I am presently from. We instituted an entrance fee in 1972. Now, about 60 percent of our operation and maintenance costs derive from the entrance fees and other user fees that are charged. We have found some fantastic results from these, too. We have to have an educational program ahead of us for the public. We charge $10 a year for up to ten persons in a vehicle to enter any of the State parks per year at the present time. We are getting many objections to the that level of fee. We think that you can't feed a family of four for that price, but we do have an educational process that we must go through with our citizens in the user fee concept. We are prepared to do that Delaware.

The other thing that we have found with the user fee concept is that the public expects better quality parks as a result of paying the fee than they did in the past. Perhaps that is good, too. They require or demand additional recreational opportunities for the fee that they are paying. It is a two-sided sword for we were relying on the Land and Water Conservation program as many other States have been to provide those matching seed moneys for the capital development project.

We also have discovered that with the user fee program we must be aware that the whole spectrum of recreation is a Federal, State, local and private sector partnership, and for many years we have not been sensitive to the private sector's needs in pricing. We, however, are looking at that and we are aware of bringing our fees up to the level of the private sector.

On the other hand, we have to caution, too, that where Government has been involved, we unfortunately in some respects in comparison to the private sector, command the outstanding resources of an area. This is where the public wants to go, and we have been in business for years. When the private sector moves into the area and now provides the recreational opportunities such as camping, it is very difficult for the governmental agency to suddenly say we are going to close our campground and move out of the area. The public will not let us do that at this point, but the user fee program is the way for us to compensate. The fee ensures that we are equal to or above the private sector in pricing for equal services.

The other finding that we have is the control factor. Many of our areas are beginning, literally, to be worn out from numbers of people entering the area. Through the user fee system you are able to control or at lease minimize the amount of impact on a particular area. So in summary, the association and in fact the State parks in Delaware support the user fee concept.

Mr. REILLY. Thank you. Pat.

Mr. NOONAN. I have one question for Derrick or Barry. Have there been any jurisdictions, local, State, or Federal, that have sold their improvements to investors to utilize the depreciation advantages and then leased them back through the 15-year period that the depreciation runs? This is being done with hospitals and other nonprofit enterprises, and it is being talked about quite a bit now with the new tax law incentives for depreciation. Maybe nonprofit and public agencies should not own buildings but should consider selling them as a revenue-producing resource that then goes into some type of recreation resource fund.

Derrick or Barry, has anyone done this to your knowledge in the recreation field?

Mr. TINDALL. Well, there are similar situations, Pat. I don't know that they are identical to the dollars and full ownership that you refer to, but there are an increasing number of situations like the Maryland National Capital Park and Planning Commission where the Capital Centre sits on public parkland because the private sector hasn't developed the money to put up 40 years after first public ownership. It is not the same type of situation, but it is similar.

It may surprise some people to realize that the Park Place in Baltimore, a private sector venture, sits on public parkland. Again, that is a somewhat different approach. But private sector development, of course, pays local tax revenues, so it is in the area that you referred to.

The only public/private venture I can think of is not in the area of parks and recreation. The City of Falls Church, Va., has a fleet of police cars in which they worked out a very nice sell-back, leaseback relationship. It includes a maintenance contract—very beneficial to the public entity, but it could work in parks.

Mr. NOONAN. Are you aware of any specific situations except for the new tax law?

Mr. CRANDALL. No, I am not. I have been told that historic preservation, for example, may offer more opportunities for that kind of activity than recreation.

However, I would say that tax incentives are a legitimate vehicle to look at. I think the trend has been the other way, though, Pat. What I am quite aware of is the assumption of formerly publicly provided recreation services by nonprofit or for profit organizations for leases that are maybe a dollar a year or something like that. The American Youth Hostels has assumed the responsibility of a significant number of local, State and Federal properties where they provide the management activity. But I am not aware of any purchase and lease-back arrangements.

Mr. NOONAN. Thank you.

Mr. **Reilly**. Any other questions or comments from the floor or the panelists?

Mr. **Chandler**. Bill, I have one question for the two panelists regarding recreation. I didn't exactly get a firm understanding of where you would draw the line in terms of who is going to pay for recreation and what percentage should be paid or what types of activities or facilities should be allocated to Federal, State, or local role. I am wondering if either of you would like to tackle that very big issue. It seems to come up more and more frequently in this town because, I suppose, you could go either way. You could say well, if you want to recreate, find some way privately to do it except for maybe a few park facilities.

I would like a little bit better definition of what the issue is—Bill Chandler, Chandler Associates.

Mr. **Crandall**. Let me start because that is the essence of one of the key issues that we have to address. That is a political issue. I don't see it as an economic issue. Resolving it depends upon where the people in this Congress and State legislatures and local governments choose to define what services will be provided and subsidized.

I guess there is also another way. There is an economic way to address the subject. There are certain activities which are dispersed by their character and for which a fee system appears relatively difficult to construct as a cost-effective fee mechanism.

In my paper I suggest that it may be appropriate for the Congress to make a determination as to what kind of recreational activities would be the primary target of fees and charges. I throw out one possible solution. That would be to say look at the total aggregate recreation programs at the Federal level for any particular agency. Take the Forest Service which happens to be roughly 40 cents per recreation visitor day provided. That includes hunting and fishing and camping and everything else. Budget about $100 million a year to provide about 240 million recreation visitor dollars per year. The Congress could tell the Forest Service that if any recreational activities exceed the cost of the average recreation within the total Forest Service, then those would be targets to recover some percentage of the total cost of that program activity.

This approach gets at the basic problem of somebody taking a walk in a public park or somebody taking a walk in a National Forest where in fact the cost that you would assign to that is extremely low. That may be a threshold, so you would say, for example, in the National Park if you are looking at a somewhat higher visitor recreation cost of perhaps $3. What you say is for any recreation services that can be identified, whether it is a boat ramp or something else, that exceeds that $3 threshold, then you would attempt to recover 85 percent or 90 percent.

If you had a recreational trust fund, you could simply allow the general revenues to mesh those dollars that are collected in user fees to come up to the total 100 percent operating budget of the Federal recreation program. In other words, you are saying that you collect the moneys from those who receive an identifiable service. Because the Government has decided, that the rest will be subsidized, a matching formula would be set up so it bypasses the current annual appropriation morass.

One other comment I would like to make, and that is I think the user fees issue should not be looked upon as the panacea for providing recreation on the public lands. In fact, it is one of at least a threefold program that we need to look at very carefully. The user fee is one.

Second, we need to look at mechanisms to free up the public lands for increased private sector investment and management for groups like KOA, and look for opportunities to convert the operation of recreational programs.

The third would be to look more carefully at cooperative agreements where the public land or Federal lands are actually used by State, local units of government. Under co-op agreements, it is done all the time right now, but the fee collection mechanism may be easier at the State and local levels. For example, I am looking at boat registration programs, motorcycle registration programs, things like that. Imagine a Federal motorcycle registration program, for example, where the Federal Government then wouldn't have to disaggregate the money down to the local level of recreation.

Mr. McIntosh. Bob McIntosh, National Park Service——

Mr. Tindall. Just quickly to Bill's comment—the range of considerations are many, Bill, in the whole pricing scenario but I have referenced an actual one. It is a manual called "Public Policy Model for Fees and Charges." It goes into considerable detail on the array of issues Ms. Foxwell mentioned, from the fee all the way to cost plus delivery plus capital. Park and recreation managers have and are dealing with that situation. I would refer you to that particular report. Another report, just out of the University of Georgia at Athens, explores the way we establish pricing scenarios.

The bottom line is that the Public Parks and Recreation Administration has to deal with instruction by your observation to exclude urban recreational experience. I would have to ask why, but there is the notion, I almost hate to use the term, of a recreation safety net. We have heard a lot about safety nets in other areas of social welfare and delivery. How you do define that safety net becomes the threshold at which that net catches people.

Mr. Siehl. I would like to respond to Bill's comment also. In view of the reluctance of some organizations to admit that user fees are palatable, it almost seems that the affluent are holding the poor as hostage, claiming that, gee, we can't charge fees because the poor people couldn't go to Yellowstone. I think that is begging the question. I think that it is rather shortsighted to overlook the possibility of using the income that would be derived from user fees that would be coming from legitimate users of distant National Parks, those who can easily afford to pay. I think we need to do that and not to hold the poor hostage or as an excuse for not paying fees for everyone.

Mr. Reilly. All the way in the back?

Mr. McIntosh. I would like to ask Mr. Irland and Mr. Hopkins, about the cash flow cycle in terms of fees collected, based on their experience in the States of Maine and Delaware. Do they go back to the place to which they were collected, to the State park system, or do they go to the general treasury of that State? Based on their experiences, are there any adjustments that they would recommend or any recommendations that they would think we might consider in the Federal Government when talking about the fee question?

Mr. **Irland**. In the State of Maine, park revenues are returned to the general fund, and they aren't available for any other expenditures that the park agency might have to make. I would conjecture that that is probably the case in most States. As to what adjustments might be made, you don't have to hang around State government very long to learn that legislators are very resistant to dedicated funding schemes. The trend seems to be Governors and electors are undedicating things so as to gain a greater degree of control over appropriations and priorities. I was one of a dying breed of public land managers—we had a fully dedicated agency which is very rare, and had to work hard to swerve off an attempt to undedicate our organization's funding. I am not certain that dedicating really is the answer so much as letting people understand what the real long-term costs are. As long as you overlook your O&M costs and your real capital costs, it is pretty easy for people to underfund in the long run.

I think we need to let people understand what the real costs are. We need to let people understand what alternatives are, and we need real leadership to go and advocate provisions for those needs.

I had another comment that I would like to make, but before those other topics I would like to turn it over to Mr. Hopkins for his views on Delaware.

Mr. **Hopkins**. I didn't comment earlier, so I am glad you asked the question. Unlike Maine, we do have the money returned back to the State parks for the operation and maintenance of the park. Our legislature looks favorably upon that as long as we give them a report of what we are collecting and where it is being spent. We have found since we have that user fee in effect that if we let the people know they are being returned to their State parks for operation and maintenance, the public is a little bit more receptive to paying the fee. They would be less receptive if it was being sent back to the general fund for highway maintenance or other activities not related to recreation.

Mr. **Irland**. Do you have a guess as to what their general rule is in most States?

Mr. **Hopkins**. I would say you are correct. In most States funds go back into the general fund.

Mr. **Jarvis**. Destry Jarvis, National Parks and Conservation Association—the talk with regard to the National Parks recently has been that the parks are underfunded. The park restoration and improvement project has dedicated itself to more money for the parks and the idea of increasing user fees is devoting itself to better funding for the park.

My question is that merely imposing higher user fees doesn't necessarily mean that that money automatically would translate into added dollars for operation and maintenance. What is to prevent the appropriations process or the budgeting process of the agency to merely offset the increased revenues against money that would otherwise be appropriated? In other words, you raise $10 million in user fees, while you reduce the amount that would otherwise be appropriated by $10 million, so you have a net wash. You don't increase the amount of money available to the agency. I have not thought of any mechanisms to assure that doesn't happen. If the issue is that we need to increase the funding because they are not now capable of adequately maintaining the parks, how does increasing the user fees get you to the point of increased funding at the bottom end?

Mr. **Irland.** I guess I don't think anyone has argued that raising the ticket prices will automatically catch us up on our backlogs or assure that the funding will be used in the ways that we desire. But that approach certainly creates the potential. It is clear that the legislatures will look at the revenue side of an operation and even if the revenues aren't legally dedicated to that purpose, they will consult the figures and realize this system is bringing in so much.

It boils down to what I said yesterday. You are not going to have any of these conservation purposes properly dealt with unless you have leadership. You can have user fees or dedicated. You can have plans. You can have inventory, but you are not going to get any of this stuff done properly unless you have leadership. Your organization and others are the ones that are playing a constructive role in keeping the administrator's fee to the fire in trying to provide that leadership.

Mr. **Reilly.** The Conservation Foundation published a report in 1978, "The Land Nobody Wanted," on the Eastern National Forests. One of the issues we looked at was financing, and it was clear that the noncommodity values offered by those forests were significantly undervalued by everybody involved. Partly for that reason we offered the suggestion that the recreation interest be charged in order to demonstrate the very significant advantages that accrued to, not only to the individual, but the local economies and economic advantages easily translated into measurable advantages as a consequence of these forests, many of which are within a day's drive of more than 100 million people. In that instance, it was really to make the case for better conservation, better protection of the resource, that we made that proposal. The situation is not analogous with respect to parks because in the eastern national forests, we are trying to offset timber sales. We were convinced from the analysis that the recreation advantages might very well outweigh the commodity advantages in a great many of those forests.

Derrick, you were going to comment?

Mr. **Crandall.** I think Destry raises the $64,000 question. I would suggest that we look back to the Land and Water Conservation Fund. I don't think there is anybody that thinks it didn't do a magnificent job of increasing the recreational opportunities in America, but I would also suggest to you that in the continuing battle to get dollars in the Land and Water Conservation Fund, and particularly on the State side, the recreationists of America are not out there fighting for that funding. Why is that? I think they perceive that it is not their dollars. I believe based upon my extensive experience in State legislative activity, that if you make these people believe it is their money, they will provide the inducement for the political process on Congress to make the appropriations process work. I guess the bottom line is that as great and glorious as the Land and Water Conservation Fund was, it had one fatal flaw in that everybody thought that it was a gift. It wasn't a gift, but the reality is that in the mind of the using public, the benefits of that fund were not perceived to be dollars that came out of their pocket.

Mr. **Reilly**. Barry?

Mr. **Tindall**. A comment, Bill, related to yours and in part to the observation that Destry made. The struggle within the park and recreation management community has been touched on by Bill, Ms. Foxwell and others. In part, the questions are what do you charge for and what do you not charge for? An interesting concept has been put into practice by some local park managers such as Ogleby Park which is the flagship of the Wheeling, W. Va., Park Commission. They have two major parks, Wheeling Park and Ogleby Park. When I served as an intern up there several years ago, their operating budget was on the order of $2½ million for the year. They requested and received from general tax moneys $50,000. The rest of the revenue was developed from fees and charges. As a student of parks and recreation, I immediately asked the question who are you pricing out of the recreation experience? They said that because we have a strong revenue base, we are able to offer many additional free programs as part of auxiliary staff duties.

You know, there is a symbiotic relationship between recreation experiences. The article that I referred to in the "Virginia News" magazine talks about, I think they use the term "maximizing," putting a whole package of revenue development together. I think it would work with the national parks. Fees for some things will recoup much more than the cost of the activity or delivery of that service, but in other situations as Derrick suggested there is threshold below which you can't make any money. I don't know whether point is reached with canoeing to trail use or whatever—I have to take issue with part of the charge plowback scenario. I am familiar with the debate that the recreation boaters had when they split off part of the unreclaimed boater fuel taxes from the land and water conservation fund.

It is easy to assess a cost of building a boat ramp or marina or something of that nature. It is more difficult to assess the cost. It is much more difficult to assess the cost and benefit of saving a wild river or a natural stream into which the boat ramp leads, as was mentioned in the externalities debate earlier today. Where do you begin and end with the cost of recreation experience? We have yet to answer that question in any reasonable sense. And I don't disagree with my associate's scenario, but it is perhaps a larger picture than we are able to capture here today.

Mr. **Crandall**. Do I have time to make a clarifying comment? What we are talking about is the act of Congress in 1980. It came from a dissatisfaction on the part of the voters of America who were paying a Federal fuel tax which was originally being put into the land and water conservation fund. It was a few drips in the bucket compared to the OCS revenues—not a significant force. But there is a difficulty that we need to address very carefully, which is the perception that they were not getting a fair shake, that in fact, there were boating facilities about that were put in and paid for at the State level with land and water conservation funds, that were primarily not for our boaters. So I am suggesting that user fees do open up this question, and throwing it into some kind of a kitty like a recreational trust fund does suggest in some political discussions as to whether in fact it is an equitable allocation of the resources. Are the people paying in really getting the return on their dollars?

There is one other thing that I do want to address, and that is the perception that user fees cannot be done in a vacuum. Essentially the users have to be able to identify the level of services that they want to pay for, and that is a difficulty. Right now we are going through a similar debate with the Coast Guard waterway user's charge concept. The Coast Guard has said they are spending $213 million per year to provide services to recreational boaters. Recreational boaters of America say wait. The total of all of the State boating programs are primarily deliveries of recreation services from safety to boating training, an aggregate total cost of less than $100 million. How can you be spending more than two times what the States are spending and providing us with less of the valued services that we believe we are paying for?

What happens has been that the boaters won't pay the Coast Guard user fee without screaming and trying to block it. If the Coast Guard were to say what are you willing to pay for, in other words, if we are spending $200 million, what don't you value? If you examine what should not be valued, then I think you have got a much easier task of trying to identify a sustainable user fee.

Mr. REILLY. OK. We are running out of time. I think we have got time for one more comment or question. All the way in the back?

Mr. O'NEILL. Brian O'Neill from the National Park Service—I would just like to comment I have heard some discussion on incentives, but as a practictioner in the field, in my case the Golden Gate National Recreation Area in San Francisco, I think that if you are going to look for revenues and taskmen, if you are going to look for concepts that are going to make people really hustle to recover costs, there have to be certain incentives.

Now we as the Park Service are looking at internal incentives, whether they be performance evaluation incentives or whether they be bonus incentives that give an appropriation bonus to those parks who are able to recover *x* percent of their operating budget through the generation of external funding support.

I would like to challenge and raise as a thought-provoking concept to Congress what types of incentives that Congress may be willing to provide to make Federal agencies change the way they do business. Congress does try to stimulate grant programs by challenging an agency or a unit of Government to get others to generate funds. But we don't apply that same concept to the operation of Government itself if we have two different sets of ground rules. I would like to see some type of special effort given to built-in incentives that might be advisable to get Federal agencies to change the way they do business. There is no question in the future that Government agencies at all levels are going to have to look at revenue enhancement and cost recovery and that all agencies are going to have to be operating at a more self-sustaining basis. Whatever selective or congressional directives that can be given that help achieve that change are worth looking at.

Mr. **Reilly**. OK.

Mr. **Tindall**. Bill, let me just cite one recently published little newsletter that we do. It is called, "Keeping You Current." The present topic is called survival strategies, and the subtitle is thinking and acting like entrepreneures—the first order or business, written by Stan Drakish, professor at North Carolina State University. If anybody wants a copy of this, I will send one out to you.

Mr. **Reilly**. George Siehl, you have, and I think appropriately, the last word.

Mr. **Siehl**. I don't know if it should be the last or not, but one partial response to Destry's looking for ideas, ways to make sure that the collecting agency isn't shortchanged. If you aren't collecting dollars but services, there is no way that Congress can take those back. One of the ideas that was bouncing around over in my office last year was that for every new wilderness area we establish, it would have to be paid for out of user fees. The amount of the fees would be determined by the value of the state of the timber at the time you established the unit. Now since some of the most frequent users of wilderness areas are college students and young people who are long on time and energy and short on dollars, provision would be made for a sweat equity provision for them to make use of the wilderness area. Perhaps 2 days of the weekend working cleaning up nearby National Forest or National Park campgrounds could give them 5 days admission to the wilderness area.

We know there is a tremendous maintenance backlog in all the land managing agencies. This will be one way that some benefit would accrue to the public and Congress couldn't take it back.

Mr. **Reilly**. If by any chance you should happen to have anything written on the subject, maybe you could make it available for the record of these proceedings.

Mr. **Siehl**. I believe I have a short paper on that.

[The paper referred to follows:]

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

IMPLEMENTATION OF USER FEES IN NEW WILDERNESS AREAS

Draft for Discussion

George H. Siehl
Specialist
Environment and Natural Resources Policy Division
September 9, 1981

IMPLEMENTATION OF USER FEES IN NEW WILDERNESS AREAS

ISSUE: As additional wilderness areas are established certain other resource uses, such as lumbering, are forgone, resulting in some economic losses to the public owners of the resources and to local communities which may be dependent upon commercial use of the timber.

PROPOSAL: A wilderness use fee would be required in all new areas being designated as wilderness in National Forests or on the public domain lands where harvestable timber would be included. The new wilderness areas would be placed in wilderness management for a period of 25 to 30 years. During this period the wilderness use fees would have to total approximately 60 percent of the value of the commercial timber at the time the area was set aside. If this level of receipts (or whatever level might be chosen by Congress) were not reached, the area would revert to multiple use management or other allocation under the forest planning process. If the prescribed revenue level was reached, users would have purchased permanent wilderness protection for the area.

ELABORATION: The fee should be set at a level that might reasonably be expected to recover the timber costs over the period of protection, bearing in mind that high levels of visitor use detract from the quality of the wilderness experience for many users. For purposes of discussion, a fee of $10 per day might be considered.

Among the principal users of wilderness areas are students who might find such a fee a barrier to wilderness travel. They would have the option of visiting older, non-fee wilderness areas, or earning a sweat equity use of the fee area. The latter would involve two days of work in campgrounds or on trails in the National Forest or other Federal facility in exchange for five days' use of the wilderness area. The acquisition account would be credited with $50 for each such work/entry use.

The local government units could receive from the wilderness use fee the same percentage of revenues they would receive in a timber sale. Governments would have the option of taking PILT disbursements instead.

DISCUSSION: The high level of demand for establishment of new wilderness areas is likely to continue as long as wilderness is provided as a free good. Advocates cite the aesthetic values of wilderness and such resource benefits as wildlife habitat and watershed protection. They seldom address the economic negatives of wilderness designation, particularly the jobs and public revenues eliminated by the decision not to harvest timber.

Under the present no-cost opportunity available to wilderness users, there is no direct measure of the economic value of wilderness to the users. A wilderness use charge would provide some measure of the economic demand for wilderness.

It is recognized that the public realizes benefits other than recreational from lands managed as wilderness. These values are recognized by setting the user fee goal for wilderness designated areas at 60 percent of the commercial timber value. The public, by forgoing the economic returns from timber harvesting, would be paying for part of the public values received. The users of the specialized recreational experience would be required to match the balance of forgone benefits.

OTHER CONSIDERATIONS:

1. This option suggests only a running tabulation of user fees against the value of the timber at the time the area goes into wilderness management. The variants which might be considered include:

a. Earmarking the fees collected for wilderness management expenses or recreational facility development and maintenance.

b. Interim fee goals might be established on a pro rata or other basis.

c. The timber value might be based upon a combination of stock in place at the start of wilderness management plus estimated growth over the period of user fee collection.

2. The question of mineral and energy resource exploration and recovery in the wilderness user fee areas is not addressed. The level of restrictions or prohibitions against such activities is left to Congress to determine. One possibility would be to allow the transfer of credit for user fees collected in the event mineral or energy resource development is allowed in such an area. An alternative would be to make all minerals in such areas leaseable, with a portion of the revenues being designated for credit to the wilderness area purchase account.

3. Another major consideration is that of requiring user fees in all wilderness areas. If this decision is made, the money collected:

a. Could go into the general funds of the Treasury;

b. Could be apportioned among the wilderness purchase area accounts;

c. Could remain with the administering agency for specified or general use; or

d. Could be placed in a revolving fund fed by all recreation related revenues generated on Federal lands and used to fund maintenance or improvement of Federal recreation facilities.

Mr. **Reilly**. This has been fun. Many thanks to the panelists and to the respondents, to all of you out there. This has been I think a fascinating 2 days, as the session was 1 year ago. You heard the Senator lay on Pat Noonan and me a request that we prepare a summary of some of the highlights. I suppose given the original charge, it will be a summary oriented toward a legislative possibility and recommendations. We will prepare it, and I gather from these remarks this will be made part of the proceedings.

Many thanks to everybody for participating, particularly again to you, George, for having taken the lead in organizing this in the Congressional Research Service. You did a whale of a job.

Tony, did you want to make any last comments?

Mr. **Bevinetto**. No. Thanks.

Mr. **Reilly**. Our thanks for having facilitated this and given us the leadership to bring it off.

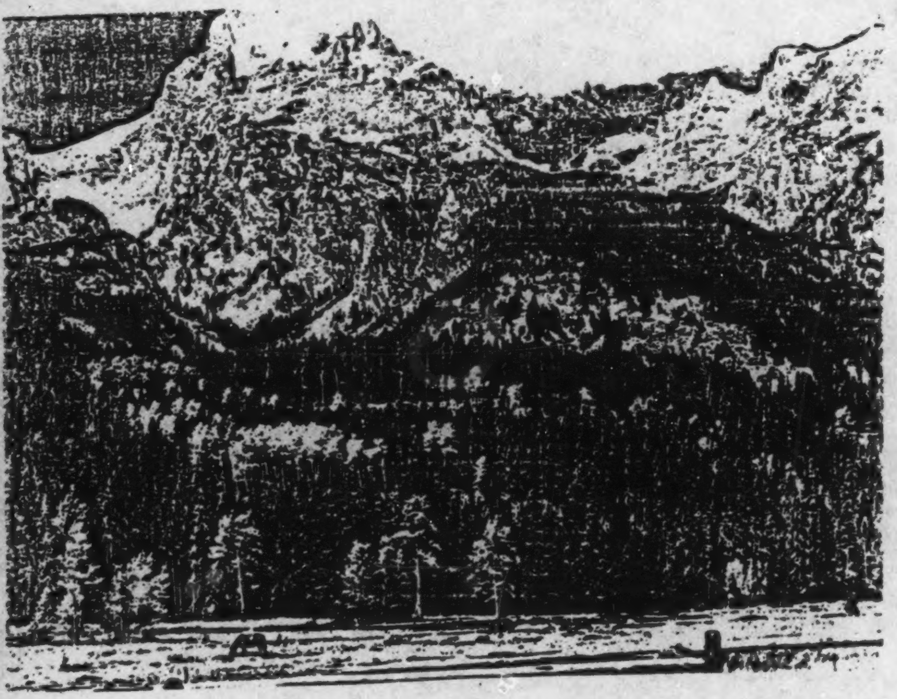
[Whereupon, at 5:30 p.m., the workshop was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

National Park Service
U.S. Department of the Interior
Washington, D.C.

ALTERNATIVES FOR LAND PROTECTION
A Review of Case Studies in Eight National Parks



Prepared by

American Land Forum
Bethesda, Maryland
June, 1982

Foreword

This report, prepared at the request of the National Park Service, is a summary of internal NPS studies of alternative approaches to park protection undertaken in eight national parks in 1981 and 1982. The object was to explore alternatives for protecting units in the National Park System, without relying entirely on direct federal fee-simple purchase of private lands.

The principal author of this report is Cecily C. Kihn, Associate Director of the American Land Forum. She was assisted in this work by Carol H. Anderson and other members of the American Land Forum staff. The typescript was prepared by Philip M. Porter. A committee drawn from the board of directors of ALF reviewed the material and made many valuable suggestions. These were Malcolm F. Baldwin, Robert E. Coughlin, and Robert C. Einsweiler. Warren Brown of National Park Service was the technical project officer. We also wish to acknowledge the generous help of the superintendents of the eight parks under study and various members of the National Park Service staff in Washington and the regional offices associated with the case study effort.

Charles E. Little
Editor-in-Chief
American Land Forum

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I. THE NEED FOR NEW APPROACHES

Growing Pressures on the National Park Service

During the last twenty years, the National Park System has tripled in acreage and almost doubled in number of management units. Between 1960 and 1980 the number of units increased from 185 to 323. Acreage authorized rose from 25 million to 77 million, including 45 million acres of National Parks in Alaska. Between 1977 and 1980 alone, 32 new parks were created and almost $800 million added to the existing backlog of claims against the Land and Water Conservation Fund for National Parks. By contrast, since fiscal year 1980, appropriations for National Parks have declined significantly, leaving a substantial discrepancy between plans for and actual ability to acquire parklands -- a discrepancy that will sharpen if land prices continue to rise. In rural areas, land prices increased 325 percent between 1970 and 1980, and in some areas under metropolitan growth influences prices were doubling every few years.

For the National Park Service, the problem of carrying out an ambitious legislative agenda to acquire ever-costlier land with a relatively small amount of funds has been compounded by the increased complexity of many of the parks created during the late '60s and '70s — large parks in metropolitan areas, parks in scattered pieces, parks where NPS has been instructed to share planning, management and operations responsibility with local, state and private entities.

Many more parks, both new and traditional, metropolitan and wilderness, are subject to the influences of increasing development on adjacent lands. Increased mineral leasing and residential development in the South and West are particularly serious changes affecting parks in these parts of the country. The NPS 1980 Report to Congress, The State of the Parks, documented these and other pressures on parks across the country. Since this report was made public, conservation organizations have pressed NPS to deal more effectively with these problems.

Moreover, the Park Service has been under increased attack by influential organizations made up of landowners affected by the parks. The General Accounting Office (GAO) has also sharpened its criticisms of NPS land acquisition and management practices asserting, in its most recent of several reports during the last few years, that NPS still acquires too much land and refuses to adequately consider the use of land protection strategies beyond fee simple acquisition.

Policy Shifts

All these changes and pressures have been developing for at least three Administrations, as have limitations in appropriations for the Land and Water Conservation Fund (LWCF), the primary source of acquisition funding for the National Park System. Appropriations for LWCF began to be seriously curtailed in 1980 under the Carter Administration. These reductions continued under the Reagan Administration, which has also expressed concern about land acquisition policies and practices of the National Park Service and other agencies. By February, 1981, federal land acquisition had been put on hold, and Secretary of the Interior James Watt had proposed redirection of the LWCF from acquisition to repair and improvement of the infrastructure and facilities in existing National Parks. Within the Interior Department, a "Lands Policy Work Group" was established to redefine the federal government's role in open space conservation, including acquisition of land for National Parks. The group reported its findings on

July 12, 1981, just after a two-day "Workshop on Public Land Acquisition and Alternatives" sponsored by the Senate Committee on Energy and Natural Resources. The purpose of the workshop, according to Senator Wallop's opening statement, was "to shape... a new land and resource protection policy which would include acquisition as only one tool." At the workshop, Interior Secretary Watt remarked on the sizeable amount of land the federal government already owns and the "great strain" on the NPS imposed by the plethora of recently-authorized parks without proportionate increases in funds for staffing, restoration, operation and maintenance.

The Case Study Effort

In response to the State of the Parks report, the Senate workshop, the GAO report, and the work group's report, NPS Director Russell Dickenson instructed that eight areas be studied to determine (1) what methods beyond fee simple could be used to carry out the intent of Congress on currently authorized areas "in which there are now large unexpended authorizations against the LWCF" and (2) what "generic legislative initiatives" would encourage greater use of land exchanges, land trusts and tax incentives to protect National Parks.

The eight areas chosen for study were the Appalachian National Scenic Trail, Biscayne National Park, Chaco Culture National Historical Park and the Chaco Culture "Archeological Protection Sites," Channel Islands National Park, Chattahoochee River National Recreation Area, Grand Teton National Park and Jackson Hole, the Barataria marsh unit and "park protection zone" of Jean Lafitte National Historical Park, and Kaloko/Honokohau National Historical Park. These areas were chosen because, together, they represent over $300 million in authorized acquisitions as well as a cross-section of the problems involved in using alternative protection methods.

By September 1981, each of the eight areas had a study team assigned, consisting of at least four people of different disciplines and experience --including experts in management, planning, land protection and land acquisition. The case study effort was under the aegis of the Assistant Secretary for Fish, Wildlife and Parks and overseen by the NPS Washington staff.

The great variation in both park situation and each team's "personality" produced studies markedly different in outline and emphasis. Some teams spent a great deal of time developing methods to assess the cost-effectiveness of various alternative techniques, while others concentrated on solving site-specific problems in close consultation with landowners. Despite this variation, the questions the teams addressed were basically the same:

— What is the significance, nature and extent of the resource to be protected?

— What is the park's legislative mandate in terms of visitor access and services, resource protection, preferred levels and methods of acquisition?

— What degree of control or ownership ("level of estate") does NPS need to manage this resource according to this mandate?

— What uses are compatible with this mandate?

— What are the most cost-effective techniques and strategies to acquire this estate?

— What is the impact of these techniques and strategies likely to be on individual landowners and communities in and around the park?

By March 1982, all eight case studies had been completed. A limited number of copies have been printed and distributed.

II. EIGHT PARKS: A SUMMARY OF FINDINGS

Although the greatest utility of the eight resource protection case studies is in building a platform for the development of new policies for the National Park System, the studies have already produced two immediate but quite important kinds of changes — in team members' attitudes towards alternatives to fee acquisition and in the planning and implementation of the eight areas themselves.

For example, as a result of their study, the Appalachian Trail project office is designing a course for realty specialists on the tax write-offs and other benefits of land donations. Meanwhile, the staff of Biscayne National Park has established a good working relationship with state and local regulatory agencies who are now more aware of the kinds of developments that may adversely affect the park. In Chaco, progress has been made in securing cooperation from representatives of the Navajo Tribe and in reaching tentative agreements on exchanges with mineral companies and the state government. Channel Island landowners, previously skeptical of NPS intentions, have now agreed to allow NPS access for appraisal and survey work and are, reportedly, optimistic about the prospect of resolving questions about acquisition.

Moreover, in Chattahoochee, the need for certain boundary adjustments was realized, giving better direction to future land protection efforts. Elsewhere, the Delta Region Preservation Commission has independently endorsed the concept of using purchase and sellback for some lands in Jean Lafitte and of identifying constructive options for the park protection zone. Several properties suitable for exchange in Kaloko/Honokohau have been identified along with practical ways to resolve previous obstacles to exchanges. And, an important exchange is being negotiated in Grand Teton.

The importance of these achievements is made quite clear when seen in the light of the difficulties of carrying out the mandates of Congress and the expectations of park proponents at a time of financial austerity. The summary table on page 6, points out the gaps between authorized acreage, funding, and needs to complete the parks.

Below are narrative summaries of the eight reports. The material from the reports has been augmented by interviews of superintendents and others in the study teams.

Appalachian National Scenic Trail

Extending over a distance of some 2,100 miles, the Appalachian Trail passes through fourteen states from Maine to Georgia. The trail's route generally follows the crest of the Appalachian Mountains, but descends to cross pastoral valleys and the great rivers of the Eastern United States. The trail offers a diversity of topography, vegetation and animal life and traverses many sites of cultural significance.

Since 1925, with the establishment of the Appalachian Trail Conference (ATC), the level of private involvement in trail protection has been remarkable. By 1937, volunteers had blazed a continuous trail from Maine to Georgia and connecting existing trail systems. The study team estimates that the 61 member clubs of the ATC now provide operation and maintenance services on the trail worth more than $1 million annually. In 1968 the National Trails System Act authorized NPS to administer the trail.

Of the 625 miles for which NPS is responsible, 426 have been protected to date. Of the fourteen trail states, five have major trail acquisition programs and, all told, states have protected over 380 miles of the 621 for which they are responsible.

The primary concern of those involved in preserving the Appalachian is assurance of a continuous, protected corridor because of increasing development along portions of the trail. This development has forced relocations of the trail onto roads in several instances. Trail managers also complain of the difficulty of managing some of the scattered parcels now owned by NPS which would remain unconnected if the federal trail acquisition program were to slow significantly. The study team expressed concern about the continued viability of the federal-state-private partnership that has made such tangible progress towards protection of the entire Appalachian Trail if the "driving force" of the federal land acquisition programs (including the U.S. Forest Service as well as NPS) were to disappear. The study team's belief is that this partnership will not survive several years of minimal funding from the federal government.

In addition to examining the effects of three different federal funding levels, the Appalachian Trail study makes several specific recommendations. These include a continuation of policies offering landowners a choice of selling fee or easements; an NPS analysis of the cost-effectiveness of easements; training of NPS land acquisition staff on how to encourage land donations; improved coordination with local and regional land trusts; encouragement for local regulation of land adjacent to the trail corridor; and new authority to provide matching grants to the states for Trail protection.

Mt. Katahdin
Maine
Augusta
ATLANTIC
Montpelier
N.H.
Vt.
Concord
Boston
Mass.
Albany
Hartford
Conn.
N.Y.
OCEAN
N.J.
Trenton
Philadelphia
Harrisburg
Pa.
Baltimore
Del.
Md.
Annapolis
Washington
Richmond
Va.
W. Va.
Charleston
Raleigh
Ky.
N.C.
S.C.
Tenn.
Atlanta
Ga.
Springer Mtn.

THE APPALACHIAN TRAIL

The study team also recommends passage of H.R. 861, a bill to amend the National Trails System Act. This bill would (1) assure landowners that any donations of property interests to land trusts near the trail would be accepted by the IRS for tax deduction purposes, (2) expand NPS authority to enter into cooperative agreements, (3) authorize acquisition of lands extending outside the trail right-of-way with the funds obtained from any subsequent sales or exchanges of these lands being credited to the trail's acquisition account, thereby creating a trail revolving fund.

Status of the Eight Parks: Comparative Statistics

	Authorized Area (000 ac.)	Authorized Ceiling ($000,000)	Spent to Date ($000,000)	Acres Acquired (000 ac.)	Ceiling Remaining ($000,000)	Estimated to Complete[1] ($000,000)
. APPALACHIAN TRAIL	(625.8 miles)	95.0	44.5	29.4	45.5	29.7
BISCAYNE	175.0	36.9	26.8	95.1	8.2	8.2
CHACO CULTURE NHP	34.0	11.0	0	23.4	11.0	11.0
CHANNEL ISLANDS	249.4	30.1	0.05	1.1	26.3	26.3
CHATTAHOOCHEE RIVER	6.3	72.9	66.9	2.9	6.0	6.0
GRAND TETON/JACKSON HOLE	310.5	None	21.2	271.3	NA	44.0[2]
JEAN LAFITTE	20.0	50.0	11.8	5.3	38.2	38.2
KALOKO/HONOKOHAU	1.3	25.0	0.05	0	25.0	61.8[3]

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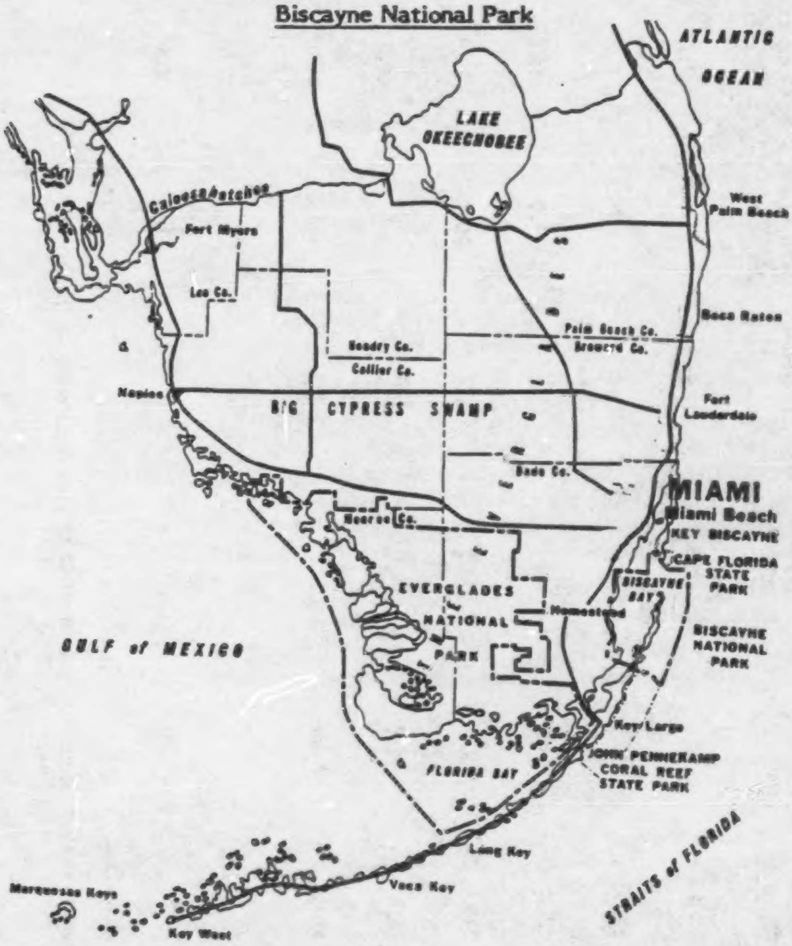
[1] Balance of statutory ceiling for all areas except Grand Teton subject to change depending on final revised land protection plan

[2] Estimated value September 30, 1980

[3] Total appraised value of tracts in fee as of December 15, 1979

Biscayne National Park


ATLANTIC OCEAN
LAKE OKEECHOBEE
Caloosahatchee
Fort Myers
Lee Co.
West Palm Beach
Boca Raton
Palm Beach Co.
Broward Co.
Hendry Co.
Collier Co.
Naples
BIG CYPRESS SWAMP
Fort Lauderdale
Dade Co.
MIAMI
Miami Beach
KEY BISCAYNE
CAPE FLORIDA STATE PARK
Monroe Co.
BISCAYNE BAY
EVERGLADES NATIONAL PARK
Homestead
GULF of MEXICO
BISCAYNE NATIONAL PARK
Key Largo
JOHN PENNEKAMP CORAL REEF STATE PARK
FLORIDA BAY
Long Key
STRAITS of FLORIDA
Marquesas Keys
Vaca Key
Key West

Biscayne National Park is located in Dade County, Florida about ten miles south of Miami and nine miles east of Homestead. Within the park's authorized boundary, there are 175,000 acres, almost 96 percent of which are underwater. A narrow strip of mainland shoreline includes about 4,542 acres, and the barrier islands comprise the remaining 4,300 acres of dry land. Almost 60 percent of the 175,000 acres authorized has been acquired by NPS, at a cost of $26.7 million, mostly through donation of land and water by the state.

Local interest in federal protection for Biscayne Bay began in the early 1960s in reaction to plans for a massive petrochemical plant and shipping facility. Following an Interior Department study in 1965, Congress enacted legislation to establish the Biscayne National Monument (up to 96,300 acres), in 1974 expanded its boundaries (to 104,000 acres), and in 1980 reclassified the area as a National Park and, again, expanded its boundaries (by 71,000 acres).

The National Park contains a number of specialized and relatively pristine estuarine and marine environments — a natural mangrove shoreline, a shallow bay, a chain of essentially undeveloped coral keys, and the northernmost extension of a living coral reef in the United States. Biscayne's diverse natural values are threatened from a variety of sources within and outside the park because of its proximity to a major metropolitan center, industrial growth and intensive agriculture. The study team concluded that these threats cannot be eliminated solely through land acquisition by NPS.

The team looked at four different strategies for park protection: reliance on current (state, local and federal) regulations, active NPS involvement in strengthening current regulations, NPS involvement in developing new legal authorities to protect Biscayne, and reliance on various forms of acquisition (fee simple and less-than-fee) and alternative acquisition methods (donation, bargain sale and exchange).

The report's final recommendations include a mix of these approaches, with NPS seeking to reach agreement with the state and county on sharing of responsibility for land acquisition within the park. Acquisition would proceed for the 50-55 acres of newly-authorized offshore keys. NPS would work with Dade County to extend certain "transfer of development rights" programs to the park so as to encourage private owners not to develop land within the park. Federal permit requirements for dredge and fill operations would be upgraded, and NPS would seek to strengthen its relationship with regulatory agencies to gain at least interim protection for the park's mainland shoreline and adjacent wetlands. In addition, the team recommends creation of a park buffer zone (extending inland from the park's boundary to the "salinity barrier") in which uses would be restricted to maintain the wetland system which directly affects the bay's ecology; and they suggest that a bay-wide authority be established to regulate development and assure that future actions by other federal agencies are consistent with a park protection plan.

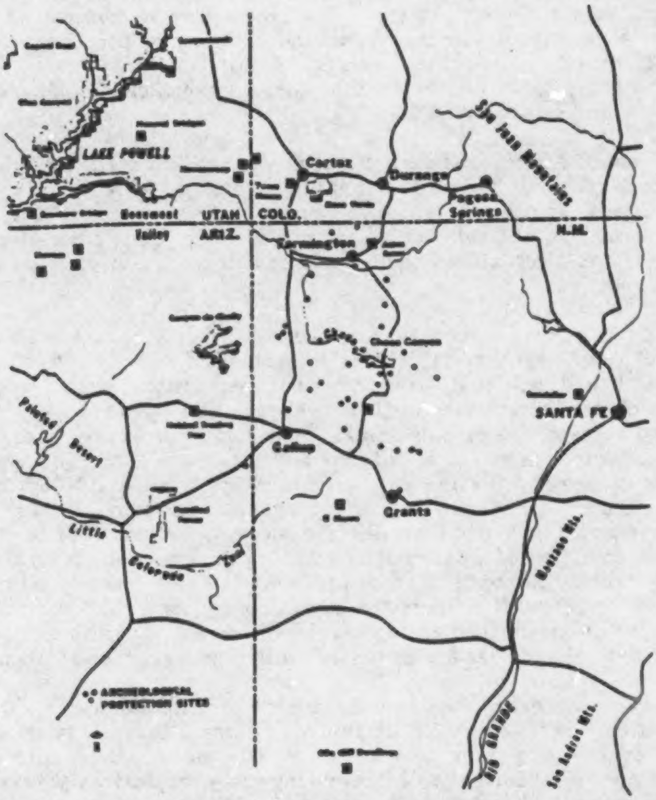
Considering recent experience in enforcement and administration, the study team found significant deficiencies in the ability of current federal, state and local regulations to assure long-term protection of the park. Even strengthened regulations may not, by themselves, achieve long-range objectives which include providing public access. Nevertheless expanded NPS involvement in regulatory proceedings was found to be necessary to protect the park from external threats and to maintain a cooperative relationship with state and local agencies.

Chaco Culture National Historical Park and the Chaco Culture Archeological Protection Sites

Chaco Culture National Historical Park and the Chaco Culture Archeological Protection Sites are located in the San Juan Basin (New Mexico, Colorado and Arizona), an area of major significance both in the cultural history of the Southwest and in terms of energy resources. Coal, uranium, potash, geothermal, natural gas and oil are found in the area.

Although the archeological wealth of the San Juan Basin was recognized as early as 1907, public and private archeological research, together with energy exploration in the '50s and '60s, uncovered many more Chacoan "outliers" — archeological sites originally connected with the Chaco Canyon civilization by a prehistoric road system. These discoveries led to 1980 legislation designating the

National Park and establishing the "archeological protection site system" involving some 33 outliers.


LAKE POWELL
UTAH
COLO.
ARIZ.
Cortez
Durango
San Juan Mountains
Pagosa Springs
N.M.
Farmington
Chaco
Chaco Canyon
SANTA FE
Painted Desert
Gallup
Grants
Little Colorado
Zuni
Manzano Mts.
ARCHEOLOGICAL PROTECTION SITES
RIO GRANDE
San Andres Mts.

According to this legislation, the "archeological protection sites," totalling 8,768 acres, are to be protected primarily through cooperative agreements with landowners. These sites are not actually part of the National Park System and are not to be managed by NPS, although NPS is mandated to participate in interagency planning efforts (with the Bureau of Land Management, Bureau of Indian Affairs, the state of New Mexico and Navajo tribes) to ensure that archeological values are protected.

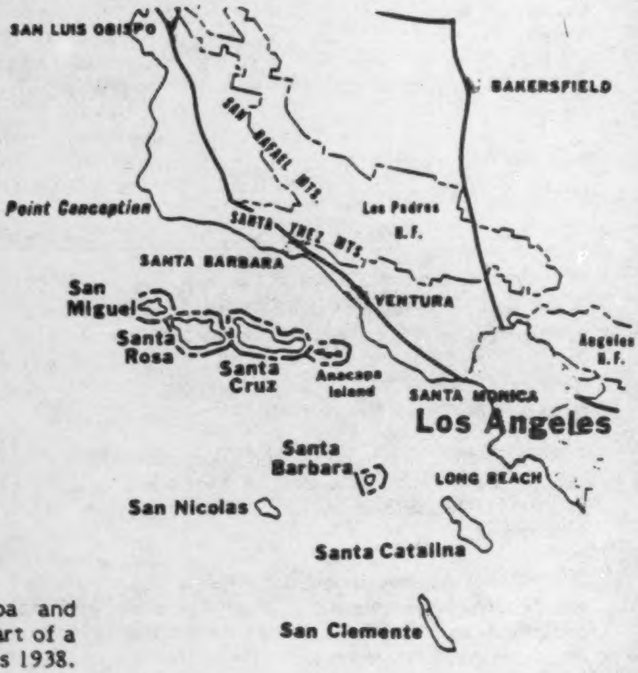
The outliers present a difficult protection problem. Not only are they widely scattered — some as much as 100 miles away from the Canyon proper — but most are in multiple ownerships with surface and subsurface rights split. Almost half the archeological site acreage is subject to mineral leases, licenses or permits, with more coal leasing expected, and about the same amount of acreage is affected by mining on adjacent lands. A further problem is for NPS to gain adequate control of the 13,000 acres within the park's expanded boundary. This acreage is mostly Navajo-owned and encumbered by mineral, oil and gas leases which present significant environmental problems for the park.

The Chaco study team concentrated on alternatives to deal with these major problems and on the feasibility of land exchanges. One reason for the study's emphasis on facilitating exchanges is that the park's legislation identified exchange as the preferred method of land acquisition, if cooperative agreements could not protect the resource, and directed the Secretary of Interior to designate a pool of land at least three times the private acreage contained in the archeological protection sites for exchange purposes. To expedite exchanges, the study recommends that negotiations continue with the Navajos on protection of the archeological resources on tribal lands. The study presents a range of possible incentives for tribal management and protection of these resources and of possible funding sources to support improved resource management. These include allocation of a portion of federal mining leases in the San Juan Basin, a corporate or private endowment, a tribal energy severance tax, and additional protective legislation for archeological sites.

Finally, the study focused in on one privately-owned archeological protection site and examined a series of options for preventing further destruction of its archeological resources. These included corporate participation in an exchange of this site for BLM lands elsewhere, the site's purchase by a private conservancy, NPS purchase of salvage or development rights, and NPS encouragement of a donation of part of the site with eventual de-authorization of the rest.

Channel Islands National Park

Channel Islands National Park, off the California coast of Santa Barbara, consists of five islands and a mainland headquarters. Two of the islands, Santa Rosa and Santa Cruz, are privately-owned, while the other three are under the jurisdiction of the U.S. Navy, Coast Guard and NPS. Of the total (land and water) acreage within the park's authorized boundary, NPS owns .4 percent and has very limited regulatory jurisdiction over only a little more.


SAN LUIS OBISPO
BAKERSFIELD
SAN RAFAEL MTS.
Point Conception
SANTA YNEZ MTS.
Los Padres N.F.
SANTA BARBARA
San Miguel
VENTURA
Santa Rosa
Santa Cruz
Anacapa Island
Angeles N.F.
SANTA MONICA
Los Angeles
Santa Barbara
LONG BEACH
San Nicolas
Santa Catalina
San Clemente

The Channel Islands represent one of the most diversified and productive insular and marine ecosystems in the world with indigenous flora and fauna of scientific interest. Anacapa and Santa Barbara Islands were part of a National Monument as early as 1938.

In 1980, Congress added Santa Rosa, Santa Cruz and San Miguel to the boundary and established the National Park. This act expanded the park's "fast lands" alone from 1,351 to 124,115 acres.

The study team described management problems relating to protection of both the park's land and water resources. The team found that state regulations to protect submerged lands and marine resources as well as NOAA regulations to protect the Marine Sanctuary Area within six miles of the island were inadequate for park purposes. However, in developing resource protection options the team's focus was on the privately-owned islands of Santa Rosa and Santa Cruz. These islands are now used mostly for cattle ranching by three family corporations, with The Nature Conservancy holding 12,400 acres in natural condition on Santa Cruz. These landowners have, in the past, pushed Santa Barbara County to allow limited second-home development on their property. The county's original land use plan also permitted onshore drilling on the islands. The county, and indirectly the islands' landowners, have been opposed in these two kinds of development by the California Coastal Commission. Despite the Coastal Commission's record of support for island protection, the study team felt that recent actions in the state legislature suggest a weakening of the Commission's powers, and, therefore, that the Commission cannot be relied on to provide long-term protection for Santa Rosa or Santa Cruz.

Because NPS has not yet completed a general management plan for the park, the study team based its alternatives for the two islands on three or four "visitor use" scenarios. Under conditions of very limited visitor use (i.e. for scientists only or for day visitors only), the team found that less-than-fee interests held by NPS would suffice. However, if NPS were to strive to accommodate a moderate number of visitors under "wilderness" conditions or an even higher number of visitors in developed facilities, the team found that only full fee acquisition of most of both islands would be adequate to provide for such uses.

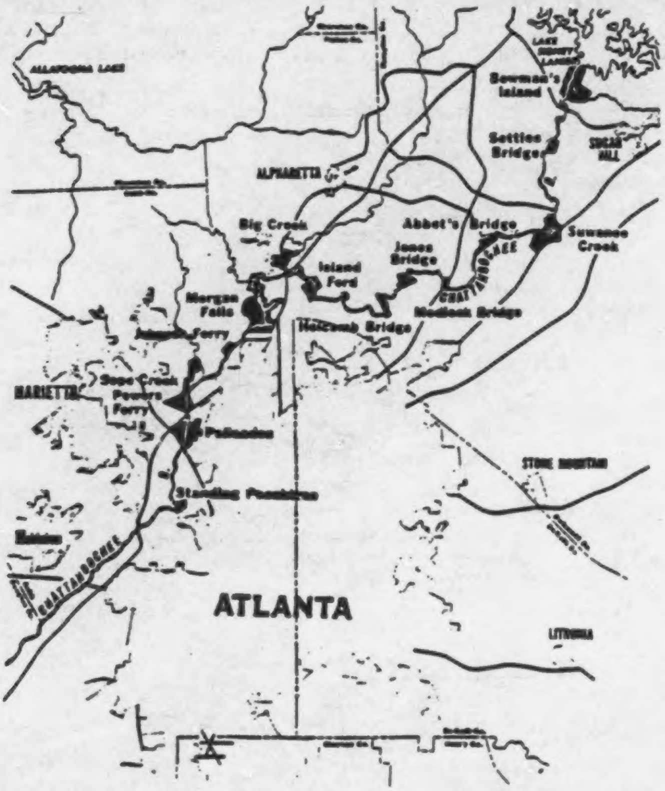
In addition to describing these site-specific alternatives, the study recommended that outer continental shelf leasing royalties be allowed as a component of land exchanges and that the exchange process in general be streamlined.

Chattahoochee River National Recreation Area

The Chattachoochee River NRA was established to protect a prime open space and recreation resource within reach of the Atlanta metropolitan area. The 6,300 acres which have been authorized border a 48-mile segment of the river in four counties northeast of Atlanta. Taken together, the park's fifteen units contain a range of scenic and historic features — outstanding natural areas, archeological sites and prime farmland — in a rural setting.

By direct purchase and donation, NPS has acquired close to half the authorized acreage at a cost of about $66 million. The resource protection study estimates that $22-26 million would be needed to complete the NRA as originally authorized.

Congress envisioned the NRA as a unique kind of partnership of state, local and federal government, in which the state and local governments would plan for and regulate the river corridor, while the federal government would acquire sites for permanent resource protection and recreational use. Although plans, policies and regulations at the state level now provide some protection for water quality, neither the state nor the four counties involved provide the regulatory protection for the corridor's scenic, recreational and cultural elements needed to carry out the park's legislative mandate to provide diverse recreational activities for large numbers of users. In view of the growth pressures on the Chattahoochee corridor (still considerable despite the recession), the lack of local and state resource protection may have serious implications for the long-term viability of the NRA.


ALLATOONA LAKE
LAKE SIDNEY LANIER
Bowman's Island
Settles Bridge
SUGAR HILL
ALPHARETTA
Big Creek
Abbet's Bridge
Suwanee Creek
Jones Bridge
Island Ford
CHATTAHOOCHEE
Morgan Falls
Medlock Bridge
Holcomb Bridge
Johnson Ferry
Sope Creek
Powers Ferry
MARIETTA
Palisades
STONE MOUNTAIN
Standing Peachtree
CHATTAHOOCHEE
ATLANTA
LITHONIA

Resource protection therefore focuses on these three elements, according to the study team:

— four large-scale boundary and mangement alternatives, one of which includes possible deletion of land from within the park boundary.

— protection alternatives for five significant sites which are not now included in the park boundary but which could be traded for certain sites NPS now owns but are not considered essential for park purposes

— analytical frameworks to guide decisions about which protection techniques or boundary alternatives are likely to be the most cost-effective in terms of protecting significant resources, enchancing the visitor's experience, permitting efficient management and minimizing any adverse social or economic impacts the NRA might have on people now living in and around it.

For the five sites, the study team examined about thirty protection techniques, including full fee acquisition. Although full fee acquisition consistently ranked the highest for accomplishing the park's stated management objectives, purchase and sellback with deed restrictions (or leaseback) and purchase of easements were seen as workable on certain of the sites.

Of the eight studies, the Chattahoochee's delves deepest into the factors that should be weighed in making major park decisions about land protection and visitor access. These analytical frameworks for assessing costs and benefits of alternatives could form the basis for future resource protection studies.

Grand Teton National Park/Jackson Hole

Bozeman
Billings
CUSTER BATTLEFIELD N.M.
BIGHORN CANYON N.R.A.
Cody
GRAND TETON NAT. PARK
CRATERS OF THE MOON N.M.
Idaho Falls
FT. HALL IND. RES.
Pocatello
Jackson
WIND RIVER INDIAN RESERVATION
FOSSIL BUTTE N.M.
GOLDEN SPIKE N.H.S.
Rock Springs
Salt Lake City
DINOSAUR N.M.

Grand Teton National Park includes 310,516 acres within its authorized boundary in Teton County, Wyoming, and is part of the Jackson Hole area. Of the park's authorized acreage, the great majority is under federal jurisdiction, with 4,903 acres of inholdings by the state and various private owners. The cost to acquire these inholdings is now estimated at $52 million.

Grand Teton National Park provides scenic grandeur and great natural diversity — dramatic mountains, wide deep valleys, morainal lakes, wild canyons and forests, historic ranch sites, highly visible wildlife, and the winding Snake River. As part of the Yellowstone ecosystem, Grand Teton and Jackson Hole provide critical habitat for many endangered species.

Teton National Park was established in 1929. The legislation included 95,360 acres of federally-owned land but left aside the rest of Jackson Hole valley which many considered an integral part of the Teton landscape. In 1943, and again in 1950, federal action included some of the Jackson Hole valley area in the National Park. An NPS-led study in 1976 recommended establishment of a Jackson Hole National Scenic Area as a means of protecting the entire valley. A bill to establish the scenic area was introduced, but not passed, in 1977. Because of increasing recreation-related development in and around Jackson Hole, protection of this area remains a major issue affecting the National Park. The study team has recommended designation of the area as a National Scenic Area with reliance on intergovernmental coordination and on a variety of land use protection measures. For other areas directly adjacent to the park, the study recommends a similar range of protection measures.

The study deals quite specifically with 14 park inholding ownerships and recommends some for protection through easements, some for fee acquisition, and one to remain in private commercial ownership as long as uses remain compatible with park management objectives. These acquisitions are to be on a willing-seller basis whenever possible. Use of various methods of acquisition (donation, bargain sale, land exchange) and the use of multiple funding sources (LWCF, allocation of mineral leasing revenues) are recommended.

The single most controversial park inholding is the 61-acre town of Kelly. The study team recommends that Kelly be declared a developed area within the park and that appropriate federal and/or county development standards be adopted to ensure that the town's growth does not detract from the park.

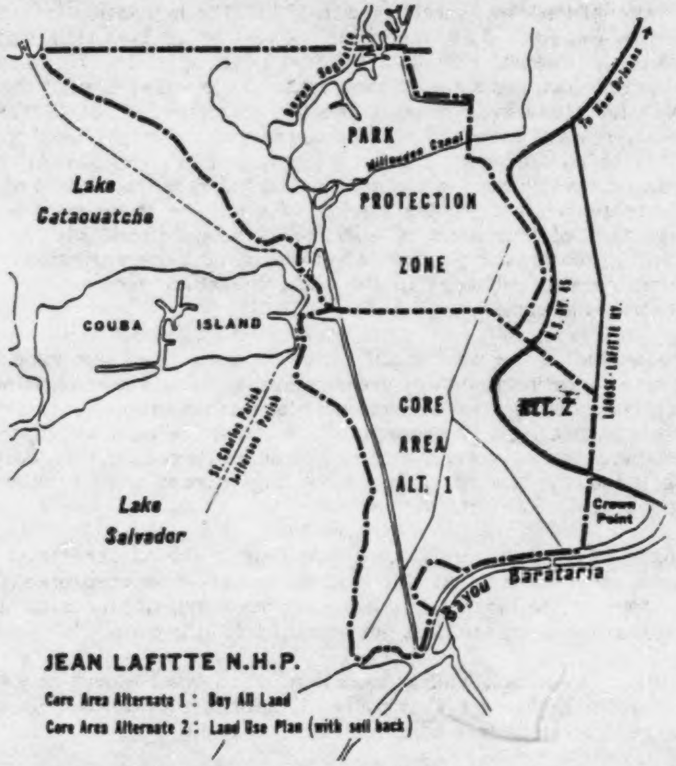
As for other inholdings, while acquisition in fee or easement may be a long-term goal, the team recognized that some of them might well remain in private ownership for generations before an owner decides to sell.

Finally, the study team recommends two "partnership" alternatives: the first is an interagency or intergovernmental coordinating council to deal with matters of mutual concern to federal, state and local agencies in the Grand Teton/Jackson Hole area. The second involves coordination of future land exchange efforts between federal landmanaging agencies within the Jackson Hole Area, including the U.S. Forest Service, NPS, the U.S. Fish and Wildlife Service and the Bureau of Land Management. The result of this coordination would be "exchange packages" including private or other lands that would be exchanged for BLM or other lands or lease values. Such interagency cooperation, according to the study, would also eliminate existing competition between agencies for exchange lands.

Jean Lafitte National Historical Park

The Barataria Marsh "core area" which is the focus of the NPS case study is actually one of five units within Jean Lafitte National Historical Park whose purpose is to preserve and interpret the natural and historic resources of the

Mississippi Delta. The 1978 legislation establishing the National Park authorized acquisition of up to 8,600 acres of Barataria Marsh and, to assure maintenance of certain natural resources in the marsh, directed that NPS in partnership with the state of Louisiana and affected localities develop a plan for an 11,400-acre "park protection zone," also within the park's authorized boundary.


Bayou Segnette
Millaudon Canal
PARK
PROTECTION
ZONE
To New Orleans
Lake
Cataouatche
COUBA ISLAND
L.A. Hy. 45
LAROSE-LAFITTE HY.
ALT. 2
CORE
AREA
ALT. 1
St. Charles Parish
Jefferson Parish
Lake
Salvador
Crown
Point
Bayou Barataria

JEAN LAFITTE N.H.P.

Core Area Alternate 1 : Buy All Land

Core Area Alternate 2 : Land Use Plan (with sell back)

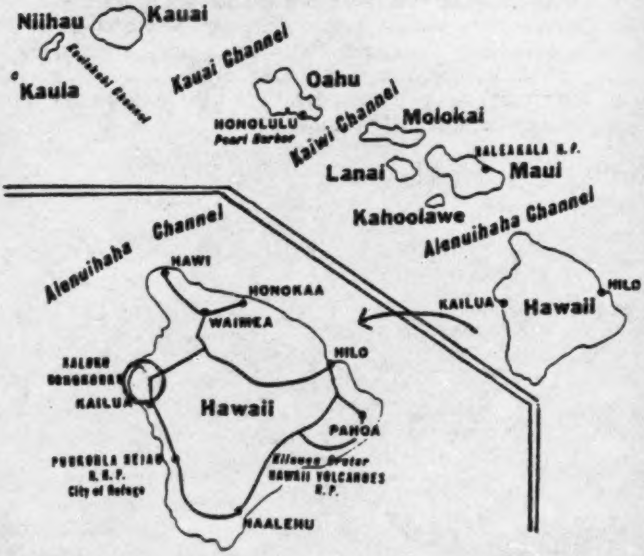
Other park units of Jean Lafitte include the former Chalmette National Historical Park, Big Oak Island and an undefined number of units (some in the French Quarter and Garden Districts of New Orleans) to be managed through cooperative agreements with private owners and groups.

Abutting a prosperous metropolitan area, the units of Jean Lafitte which illustrate the Delta landscape, Barataria in particular, are threatened by pollution and development of various kinds which cannot be eliminated by federal land acquisition within the park boundaries, including the park protection zone. In fact, the Jean Lafitte case study questions whether this in-park buffer zone is even potentially effective in protecting the Barataria Marsh unit and recommends another look at this zone -- its shape, size and basic utility. This questioning of the "purpose" of the park protection zone follows years of negotiations between the Interior Department, the State of Louisiana, and affected localities as to what level of regulation is needed in the zone and who should bear the brunt of enforcing such regulation.

The study team presented a total of twelve alternatives, the present core-plus-regulated-buffer zone approach: four relate to the Barataria "core area"and eight concern the park protection zone. Alternatives for the core area ranged from acquisition of full surface rights of the 3,409 acres still in private-ownership to de-authorization of lands within the core area which are the most expensive, have the most development potential and are least representative of the marsh landscape. One "in-between" alternative is to buy the remaining private acreage, place certain development restrictions on it, and then sell certain sections back to developers. Another is to shift certain "core area" lands into the somewhat less restrictive park protection zone.

The two "last resort" options for the park protection zone are total NPS acquisition or total de-authorization, options which might be pursued if state and local authorities fail to enact and enforce regulations adequate to protect certain aspects of the protection zone and the core area. Other alternatives include continuation of NPS efforts to develop adequate guidelines and regulations in cooperation with local authorities, federal assumption of regulatory authority within the zone, working with IRS and local landowners to encourage donations of conservation easements, and reduction in the zone's size.

Kaloko/Honokohau National Historical Park


Niihau
Kauai
Kaula
Kauai Channel
Oahu
HONOLULU
Pearl Harbor
Kaiwi Channel
Molokai
HALEAKALA N.P.
Lanai
Maui
Kahoolawe
Alenuihaha Channel
Alenuihaha Channel
HAWI
HONOKAA
WAIMEA
KALOKO
HONOKOHAU
KAILUA
Hawaii
HILO
PAHOA
PUUKOHOLA HEIAU
N.H.P.
City of Refuge
Kilauea Crater
HAWAII VOLCANOES
N.P.
NAALEHU
KAILUA
Hawaii
HILO

Kaloko/Honokohau was authorized as a National Historical Park in 1978. Of the eight case study parks, this is the only one where there has, as yet, been no NPS land acquisition. The park is located on the island of Hawaii and includes about 1,250 acres of land and water in five tracts.

The purpose of the park is to preserve the historic Hawaiian lifestyle, demonstrating traditional land use patterns and culture. The park contains 234 known archeological sites including temples, graves, house sites, altars and petroglyphs. The site's significant natural resources include varied geological formations and water bodies important to endangered wildlife. The area as a whole has a special spiritual importance to the Hawaiian people.

Half of the 1,250 acres within the boundary are privately-owned. The State of Hawaii owns the rest, including a small parcel at the southern end of the park near a newly-expanded small boat harbor, the offshore areas, and the shoreline itself up to about 200 feet inland. The park's private acreage is very valuable because of its undeveloped, beautiful shoreline and location near the island's airport and best harbor. Despite some drop in tourism, a shortage of development money and tightening of state and local regulations, most resort industry officials believe that this section of West Hawaii will eventually be one of the state's major resorts. In the absence of federal protection, the study team reports that landowners will proceed with resort development, and that Hawaii County is expected to allow such development.

The current appropriations ceiling for the park was set in 1978 at $25 million. A private appraisal a year later set the value of the privately-owned tracts at close to $67 million. Responding to the problem of an ambitious congressional mandate for park protection and authorizations insufficient to carry out this mandate, 1980 legislation authorized exchange of federal surplus lands for lands within the park.

The study team focused on coming up with exchange possibilities within the state of Hawaii and actually located ten federal properties suitable for exchange. The study identifies a variety of steps necessary to overcome obstacles to exchange and recommends new legislative and administrative actions needed to ease such transactions.

In addition, the study team considered ten boundary alternatives for the park, recommending finally only a minor change in the southern boundary around the boat harbor "to clarify continuing operations by the state." The team concluded that fee interests were needed for all privately-owned land in the park because (1) landowners had no interest in easements or other less-than-fee arrangements, (2) the land was needed for visitor use, and (3) no private economic uses were compatible with the purposes of the park. Special emphasis was placed on the spiritual importance of the park to the Hawaiian people and the need to maintain a unique complex of cultural sites.

III. PRINCIPAL APPROACHES DESCRIBED IN THE STUDY REPORTS

Comparison of Techniques

As the foregoing summaries reveal, brief as they are, the study teams were able to evaluate a wide range of approaches for dealing with contemporary acquisition, protection and management problems. The approaches involve land acquisition, regulation by various levels of government, new "partnership" efforts to pool the authorities of government agencies, and lastly, tax incentives.

The table following arrays these techniques, showing how they were approached by the study teams in the eight areas. It would be inappropriate to subject the table to close analysis. The case studies write-ups used terms variously, and in specialized contexts, so ascribing general conclusions is highly speculative and requires interpretation. Moreover, reading the table as definitive in terms of each of the study areas would also be a mistake. The evaluation of the techniques probably represents the make up of the study team and its general level of familiarity with some of the more technical approaches such as transfer of development rights, or newly emerging methods in other fields, such as agricultural zoning. Even so, the table does show that a wide range of approaches were considered if the studies are taken as a whole.

Explanation of Terms

The following explanation of terms used on the table can also serve as a general glossary for the report as a whole.

Fee acquisition via appropriation. Fee or fee simple purchase of land denotes the purchase of land outright - that is, all the interests in land. Appropriation refers to funds appropriated by Congress for the purpose. In general the term describes the traditional means by which federal park land has been acquired.

Fee acquisition via land exchange. This involves traditional acquisition of land in fee simple, but by means of exchanging federally-owned land which is surplus or could be designated as such for land needed for a National Park unit. There has been much enthusiasm for this method of acquiring land for parks, but application is limited by complex procedures and current emphasis on selling surplus properties rather than exchanging them.

Fee acquisition via donation or bargain sale. This approach would, again, produce land owned outright by NPS, but tax-deductible donation of acreage by individuals or corporations would be sought. A great deal of land has been donated to the National Park Service. Notably, for the purposes of this report, much land in the Grand Teton National park was purchased and then donated by John D. Rockefeller, Jr., to the National Park Service. A bargain sale is a kind of partial donation in that the owner sells the land for less than its market value. Landowners in this case can take a tax deduction for the difference between the sale price and appraised value.

Purchase and leaseback and/or resale with restrictions. This method of acquistion envisions, in the case of leaseback, the purchase of land by the NPS, and then leasing the land back (to a farmer or other owner) for his continued use, under restrictions that would comport with park management objectives. In the case of

PRINCIPAL APPROACHES DESCRIBED

IN THE STUDY REPORTS

	Appalachian Trail	Chatta-hoochee	Biscayne	Jean Lafitte	Chaco Culture	Grand Teton/ Jackson Hole	Channel Islands	Kaloko/ Honokohau
Fee acquisition via appropriation	●	●	◒	●	◒	◒	◒	
Fee acquisition via land exchange	◒	◒	⊗		●	◒	●	●
Fee acquisition via donation or bargain sale	◒	○	◒		◒	◒	○	○
Purchase and leaseback/resale with restrictions	◒	◒		◒		◒	◒	○
Acquisition of negative easements	●	⊗	◒	◒	◒	◒	○	⊗
Acquisition of positive easements	●	○	◒	●	◒	◒	◒	
Local land use controls	◒	●	●	◒		◒	⊗	⊗
Clustering, planned unit development			◒	○		◒	○	
Agricultural use zoning						◒	○	
Development performance standards		○	◒			◒		
Transfer of development rights		○	◒				○	⊗
State-level land regulation	◒	●	●	◒	◒		●	⊗
Federal resource and environmental regulation		●	●	○	○	◒	●	○
Informal partnership agreements	○	○		●	◒	◒	⊗	
Cooperative public/private planning and management	●	●	●	●	●	●	◒	
Intergovernmental regulation	◒	●	●					
Tax incentives, general	●	○	●	○	●	◒	●	◒

Legend

● Approach recommended for general application

○ Approach evaluated, no recommendation

◒ Approach recommended for limited or conditional application

⊗ Approach not recommended, or short comings described

blank: approach not mentioned

resale, the land would be purchased, then placed back on the market with covenants in the deed prohibiting the new buyer from undertaking certain adverse uses of the land, such as large-scale subdivision, clear-cutting, or a sand and gravel extraction operation, to name three examples.

Acquisition of negative easements. A negative easement conveys the right to restrict certain uses of land. Property ownership involves a "bundle of rights." These may include the right to mine, cut trees, build houses, or graze cattle. Negative or conservation easements can be acquired to prohibit or restrict some of these rights while leaving the rest in private ownership.

Acquisition of positive easements. In most cases for the study parks the positive easements would be to provide a public right-of-way across private land for access to a remote publicly owned parcel, or for recreational use as such -- a trail, or fishing rights along a stream, for example.

Local land use controls. Local governments have authority to regulate the use of land to protect public health, safety, and welfare. Zoning and subdivision regulations, and building and sanitation codes may control the density, size, or type of development. Zoning ordinances may include conservation zones, historic districts, agricultural zones, and large lot requirements in addition to defining where commercial, residential, and industrial uses are allowed.

Clustering/planned unit development. Clustering is a zoning method whereby builders may develop at greater densities than may be allowed by law -- say on half-acre lots in a one-acre zoned residential area — if they in turn dedicate the remaining land as protected open space. Planned unit development is a kind of giant version of cluster development which allows for a wide range of land uses and densities on a large site in return for the dedication of natural, scenic, historic, or recreational areas to the public.

Agricultural use zoning. In recent years, as the export markets have burgeoned for U.S. agricultural products, many states and localities have taken steps to zone land for exclusive or near-exclusive agricultural use. Some of this zoning is absolute, in the case of Oregon's "Exclusive Farm Use" zoning law; elsewhere non-agricultural land uses are discouraged by extremely high limits to minimum lot sizes. Forty-acre minimums are not uncommon and there are examples of 180-acre minimum (or even higher) zoning. In those parks where agricultural land is a significant portion, such zoning could be crucial to carrying out park planning objectives.

Development performance standards. These refer to local regulations which, instead of providing exact restrictions on the use of land, require the developer to meet certain goals or "standards" the best way he can — leaving room for individual solutions. This can be a significant technique for, say, permitting subdivisions in scenic or ecologically fragile areas where the developer would be required to maintain the landscape aesthetic, or to maintain essential ecological functions — such as in marshlands, steep slopes, etc.

Transfer of development rights. The idea here is to transfer, rather than purchase or extinguish, the right to develop at a certain intensity or density.

It is a complicated procedure, but the basic idea is to provide "lot credits" to those who own land in a protection area, who can then sell them to a developer who could build at a greater than normal density (to the extent of the credits purchased) in a "receiving zone" wherein such densities would be more appropriate. The technique has yet to be proven as universally effective, and is more written about than actually used. The most recent and possibly best "TDR" program is now in Montgomery County, Maryland.

State-level land regulation. In recent years a number of states have preempted or recaptured formally delegated local land use authority through the direct application of state land use controls. For the most part these controls have been focused on the protection of critical resource systems such as stream belts and wetlands. In some situations states have controlled land use directly within areas of great importance such as scenic river corridors or park reserves. These regulations have required area-specific legislation.

Federal resource and environmental regulation. This approach proposes that park managers coordinate with other federal authorities to protect land, if such authorities produce the desired level of protection. In fact, well over 100 federal environmental and resource protection statutes (the Clean Air Act and the Federal Water Polution Control Act Amendments, among many others) can frequently protect park resources from adverse impacts of development.

Informal partnership agreements. Among the so-called "partnership" approaches, there has emerged a kind of hierarchy in which informal agreements are the least permanent and effective and intergovernmental regulation (q.v. below) is the most permanent and effective. Informal agreements may be used for short-term purposes to limit the impacts of adverse private land uses within or on the periphery of parks.

Cooperative public/private planning and management. This is the next step up in the hierarchy, and would involve means to induce public or private authorities to adopt policies benefitting a park unit, such as special zoning or use provisions.

Intergovernmental regulation. Here the effect of an agreement is permanent and enforceable by the parties. The best example (and strongest) is found in the Pinelands National Reserve, wherein a state-federal partnership is established by both federal and state statute. Such intergovernmental partnerships can produce direct regulation of land within a park boundary.

Tax incentives, general. The range of tax incentives applying to land is wide indeed, too wide to break down into component parts. The most significant incentive for the purposes of the resource studies is the income tax deduction available to those who donate land or interests in land to the federal government. Moreover, there is a property-tax incentive involved in giving away land in fee or easement, and inheritance tax deductions also apply. With respect to agricultural and other open space use almost all states allow some sort of differential assessment, having the effect of reducing taxes. While there is great interest in the effects of taxation on the behavior of land owners, it is not really a land-protecting method, so much as an inducement to make choices about the disposition of one's estate that might benefit a park.

IV. EVALUATION OF TECHNIQUES

Full Fee Acquisition

Most of the study teams consider full fee acquisition to be the most effective protection method. The Kaloko study, for example, finally recommends full fee purchase for all privately-owned land within the park's authorized boundary. Similarly, the Appalachian Trail study team found full fee to be the best overall protection technique considering legislative intent, landowner desires and manageability, although the study emphasizes the usefulness of being able to acquire less-than-fee interests from landowners.

For the more intensive visitor use and "wilderness" options at Channel Islands, full fee is also considered the minimum estate needed.

In the case of Jean Lafitte and Chaco Culture National Historical Parks, the preferred options appear to be acquisition of all rights, with purchase of less-than-full-fee interests where full fee isn't possible.

The Chattahoochee study team, having looked into less-than-fee and regulatory techniques for land protection, concluded that these are generally less effective than full fee from the point of view of resource protection, visitor use and acceptability to (mostly speculative) landowners.

The Grand Teton study team recommends full or partial fee acquisition of all inholdings, except for the town of Kelly, over a period of years.

The Biscayne study team found that a full fee estate was needed for the 50-55 acres of offshore keys included in the park boundary by the 1980 legislation, but recommends mainly other-than-full-fee alternatives (at least in the short term) for most of the unacquired land within the new boundary (4,500 acres of upland and about 65,000 acres of submerged lands).

What is significantly different about the case studies' treatment of full fee acquisition, compared to past NPS plans for these parks, is their emphasis on different methods of fee acquisition — exchanges, donations and bargain sales — and on suggestions for funding sources other than congressional appropriations. At least half the study teams discovered a much greater potential for landowner donations and bargain sales to NPS; indeed, a couple of teams actually identified specific donation opportunities in the course of the study and were able to follow up on them. Several studies recommend training of NPS land acquisition staff in soliciting donations and bargain sales.

In five of the eight studies, land exchanges of various kinds are examined in some detail. As with donations and bargain sales, a few study teams were able to identify specific exchange opportunities and assess the degree of interest of the various parties involved. Three of the studies express reservations about the usefulness of exchanges for small-scale transactions and, in addition, remark on the many obstacles involved in completing even the simplest of exchanges. One team member said that the most expeditious exchange he'd been able to find out about took two years to complete. Studies where exchange was seriously considered stress the need to simplify and expedite exchanges. Study participants who had vigorously pursued exchanges were discouraged by the potential for further complication as a result of a recent executive order establishing the property review board with emphasis on selling surplus land rather than using it as trading stock for land exchange programs.

Less-Than-Fee Techniques

Of the gamut of less-than-fee techniques available, the preference for use in completing the eight study areas seems to be negative easements, purchase/sellback or leaseback, life/term estates or other use reservations, positive easements and fractional interests.

Because it is common for NPS to offer life or term estates to park inholders, it is likely that the study teams simply assume such reservations of use to be a viable option, hence, this technique should probably not be seen as an alternative to fee acquisition. NPS acquisition of fractional interests is discussed only in the Channel Islands study.

The most common reservations with regard to negative easements and purchase of development rights are (1) their relative expense and (2) the time it takes to manage them over the long-term. The negative easements purchased along the Appalachian Trail, according to the study team, have averaged 70 percent of full fee value, and positive "right-of-way" easements have averaged 82 percent of full fee value. The Chattahoochee study estimates the purchase of development rights within the river corridor would cost 90 percent of full fee value. Both these studies conclude that donation, not purchase, of easements could justifiably be pursued. It is worth noting that neither study team could estimate the additional time and trouble needed to manage easements versus acquiring land in fee because of the lack of NPS data to make such a comparison. The Appalachian Trail study team feels that an in-depth NPS study on the cost-effectiveness of easements would resolve this long-unanswered question about the true relative costs of full fee and easements.

Purchase/sellback or leaseback is mentioned in six of the eight studies with varying degrees of enthusiasm and for different scales of acquisition. This technique is actually recommended if limited to use on "non-critical" lands — where neither high resource protection nor visitor access are needed — by over half the study teams. The reservations expressed about this technique include:

— "involving NPS in the role of a landlord" (Chattahoochee)

— "public might question why land was purchased in the first place" (Appalachian Trail)

— "any rights NPS could sell back would be of little interest to landowners."

Concern about the ability of NPS to manage and enforce less-than-fee interest is also evident in most of the eight studies.

Regulatory Techniques

The potential of regulations (municipal, county, state and federal) to protect parkland is explored in detail by half the studies, receiving most attention in the Biscayne and Chattahoochee studies. The Biscayne team began work with an analysis of 100 different legal authorities which appeared to have relevance to the protection of land in the park still in private ownership. About 30 of these authorities were further examined, and several figure largely in the study's final recommendations. The Chattahoochee study team, having systematically evaluated state and local regulations to protect natural, historic and scenic resources within the river corridor, concluded that these regulations would be largely ineffective without better enforcement and a stronger intergovernmental partnership. The study also locates several major gaps in regulatory coverage.

The Kaloko study team examined the major regulations at the state and county level pertaining to the park and concluded that, while enforcement of these would mitigate damage to the park's resources, no combination of these regulations would protect resources at the level mandated by the park's authorizing legislation. The Channel Islands study found county-level regulations too lenient on residential and energy development on and around the islands. Although the study team found that the regulatory standards of the California Coastal Commission have been crucial in protecting the Islands in the past, the study concludes that the regulatory protection afforded by the Commission is, at best, short-term in view of recent efforts by the state legislature to weaken the Commission's authority. Federal and state legislation concerning protection of submerged lands and marine resources were also found to be inadequate for park purposes, and the study recommends strengthening these.

The Grand Teton study team found that local (county) zoning and other development controls could be helpful in regulating development in Kelly and in certain areas adjacent to the park. The possibility of promulgating federal land use and building standards for the town of Kelly is also mentioned.

The Jean Lafitte study emphasizes the need for better local and state regulations, in particular regulations to maintain water quality in the park protection zone, but does not discuss regulations in detail. It is interesting that this team found strength in the ability of Section 404 permits to protect the already disturbed ecosystem of Jean Lafitte, while the Biscayne study team found the same authority too weak to protect a relatively pristine wetland system from incremental destruction.

Worth noting also is a discovery made by the Biscayne study team of the potential for protection of large portions of the park through modifications to an existing county regulatory program. By researching the Dade County severable use rights program, the team found it could be used to gain interim protection for the park's 4,500 acres of mainland shoreline and, eventually, to obtain some donations of shoreline property to NPS. The team suggested that the program, now being applied to East Everglades, could be extended to cover the entire park, thereby affording compensation to landowners who choose not to develop their property but instead sell their development rights on the open market. Although the Biscayne team generally found regulations to fall short of providing the long-term, high level of resource protection mandated by the park's legislation, the time spent on examining regulation paid off in this particular instance.

Tax Incentives

One striking area of agreement in the eight studies is the potential of tax incentives to increase donations and bargain sales of property to NPS. A couple of the studies (Jean Lafitte and Chattahoochee) recommended working within the structure of existing tax laws. However, the other six studies recommended creation of additional tax incentives — tax credits, carry-overs, credits against estate taxes, and capital gains exclusions — in order to motivate private landowners to donate property. The Appalachian Trail study (in addition to recommending enactment of H.R. 861 which would assure trail landowners that their donations of property interests would be accepted for tax deductions by the IRS), mentions the need for more and different incentives to expand the range of people who can benefit from donating land for conservation purposes because most landowners along the Trail, and in many other park situations, are not in high enough tax brackets to benefit from existing laws. As a result of the study, the Appalachian Trail Project Office is developing new policies and a training program for its land acquisition staff to give them enough knowledge of potential tax benefits to interest landowners in donations. The Trail's land acquisition staff could then refer interested landowners to tax experts in local land trusts along the Trail.

Financing

While most of the studies imply, if not declare that the need for direct and substantial appropriations from the Land and Water Conservation Fund has not disappeared, the studies examine several other sources and methods of funding acquisitions. The Biscayne study mentions that state and local bond issues could be used to acquire parkland which then would be donated to NPS. Six studies (Biscayne, Chaco, Channel Island, Kaloko, Chattahoochee and Grand Teton) discuss the use of federal property, property leases, rights in property and proceeds from sale of property to come up with cash value for parkland. The property involved is depending on the study, owned by NPS, BLM or was property "surplussed" by other federal agencies through GSA. Three studies mention earmarking for park acquistion a percentage of the revenue now paid to BLM from on and offshore mining royalties (Chaco, Channel Island, and Grand Teton). The Chaco study also mentions the possibility of the Navajo tribes instituting an energy severance tax to be earmarked for parkland acquisitions.

Several private sources of funding, mostly traditional, were mentioned in the eight studies. The Chaco study proposes the greatest number of private funding sources, including the formation by a consortium of mining companies of a tax-exempt organization to manage a revolving fund for protection of the Chacoan outliers. Perhaps most interesting are alternatives involving private corporations in exchanges. The Grand Teton study, for example, suggests that mining companies could purchase parkland, donate this to NPS and, in return receive BLM lands equal in value to the parkland originally purchased.

Partnerships

Although all the studies use the word "partnership" to describe the relationship desired between NPS, landowners, public agencies and private for-profit and non-profit entities, the actual forms of partnership suggested in the studies cover a wide range, from the relatively informal cooperative agreement to highly organized public/private structures such as the one outlined in the Chattahoochee study.

Six of the studies discuss cooperative agreements to provide for a variety of things including visitor access (Jean Lafitte, Channel Islands), interim resource protection through assurance of compatible uses (Appalachian Trail, Jean Lafitte, Grant Teton) and provision of resource management services to landowners by NPS (Chaco). While some of the studies are silent on the long-term effectiveness of cooperative agreements, others emphasize their fragility (they can be terminated by either party with 30-days notice) and consider them as a supplementary protective device only.

Six studies recommend new or continued efforts in cooperative planning and management. Jean Lafitte, Biscayne and the Appalachian Trail studies recommend further NPS work with state and local agencies in improving environmental regulations affecting lands adjacent to parkland, or, in the case of Jean Lafitte, affecting the park protection zone. The Chaco, Grand Teton and Channel Islands studies recommend interagency, intergovernmental efforts to coordinate planning and resource management. The Chaco study, for example, assumes the continuation of the "Interagency Management Group" (IMG), chaired by NPS and representing the Navajo tribes, the state of New Mexico, BLM and Bureau of Indian Affairs -- all major landowners in the park and outliers. The Grand Teton study recommends similar groups be established to coordinate land management practices and future land exchange efforts.

The Biscayne and Chattahoochee studies came closest to describing the intergovernmental, public/private partnership which would plan for and regulate privately-owned land within and around parks. Such a partnership is very briefly described in the Biscayne study as a new agency with intergovernmental membership to enforce bay-wide standards and regulations and provide incentives for compatible economic development for the bay and shoreline. The Chattahoochee study describes a similar authority in the context of the "modified proposal" under which Congress would designate land within 4000 feet of the river as an "Area of National Concern" and authorize funds for planning assistance in return for state establishment of a planning entity (say a Commission) to develop a comprehensive management plan. The Commission, with federal, state, county and city representation, would exercise some (unspecified) regulatory authority over the ANC. If the Commission's plan for resource protection in the ANC were not carried out, the Commission would have to reimburse the Secretary of Interior all planning funds and, at that point, the Secretary would probably exercise the option of scaling down and eventually delegating all NPS management authority in the Chattahoochee NRA to state and local governments.

Directly related to the perceived need for some kind of partnership arrangement, is the need for a buffer zone between the park and actively developing areas or sources of pollution. The need for a buffer zone is recognized, implicitly, in four of the eight studies. The adjacent "areas of concern" described in the Grand Teton-Jackson Hole study constitute a buffer zone. Both the Chattachoochee and Biscayne studies suggested the creation of park buffer zones. In Biscayne, this zone would extend from the mainland boundary west to the "salinity barrier" (a dam separating salt from fresh water), while in Chattahoochee the zone is two-tiered — consisting of the 4000 foot corridor along the river designated as an "ANC" and the "local protection area" surrounding the ANC.

The Jean Lafitte study deals with its "park protection zone" (within the park boundary) in a very different way. The study questions the utility of this zone given the inadequacy of local and state regulation and the ambiguity of NPS authority over this area (NPS is authorized to acquire lands and interests in land within the PPZ, but only as a last resort).

V. The Lessons

General Observations

There is wide agreement among the study teams that less-than-fee and regulatory means of land protection can be useful in meeting park management objectives. However, the studies also pointed out many shortcomings of these approaches as a permanent solution to the problem of how to provide for visitor use and long term protection for fragile resources. Uncertainty about future changes in ownership, laws, regulations, enforcement capability, and monitoring problems were noted.

The studies generally agreed that NPS should acquire full fee interests on most tracts to carry out congressional mandates and management objectives for these particular parks. Full fee was seen as offering the most secure protection. However, the studies did not focus on the uncertainty about getting the funds appropriated to buy every parcel in fee. The studies were cautiously optimistic about finding new ways to pay for parkland by exchange, and tax incentives for donation.

The studies do not offer any final answer to the question "do alternatives work?" They were not intended to. Instead they confirm what has been said in the State of the Parks report and elsewhere: by itself, full fee acquisition within authorized boundaries is no longer enough to protect National Parks, added protection outside park boundaries is a necessity, protection must be afforded by agencies other than NPS at the federal, state and local level and that this protection will take forms other than that of full fee acquisition.

Next Steps: Implementing the Study Recommendations

The major concern of those who worked on the eight studies is that the studies — and their recommendations — will languish for lack of follow-through. As one person said, "The inherent danger in the studies is that results will not be realized for 10-15 years." Another said, "The verdict is still out on the effectiveness of these studies; it's up to the Department now to precipitate action." Potential site-specific solutions to certain park problems are at stake, along with the broader possibilities of land exchanges and tax incentives. The Congress, Administration, Interior Department and NPS should be especially mindful of these action recommendations, drawn from the team members themselves:

1. The Interior Department and Congress should draft and implement measures to simplify and expedite land exchanges and seek administrative funds to pursue and complete exchanges. Implicit in this recommendation, made by half the study teams, is the need to seek exceptions to the recent procedures that emphasize selling surplus property to raise cash.

2. The Department and Congress should pursue the development and implementation of tax legislation to encourage landowners to donate property or rights in property to NPS and that staff continue to be assigned to the development of such legislation. This recommendation from the teams was unanimous.

3. That money should be available to take advantage of good offers to sell to NPS on the part of inholders. This year, less than $1,000,000 was budgeted for this purpose.

4. More funds for planning oriented to solving park problems should be made available. The slowing of land acquisition provides an opportune time to take stock of park problems and propose ways of solving them.

5. Boundary adjustments proposed in the studies should be quickly reviewed and acted on by the Congress.

6. Procedures should be established to ensure that no park concept or boundary becomes fixed in legislation before a thorough study of park management and use alternatives is done by NPS.

7. The Department and NPS should recognize the need for staff trained in the use of alternative protection methods at the regional and park level, fund positions for such staff, fund development of training materials and provide both academic and field training opportunities. Parallel with this in-house training effort, NPS should develop materials for landowners which explain the benefits of donations, and the effects of less-than-fee interests held by NPS on land uses and values.

8. The Department and the Washington office of NPS should continue to provide legal and technical support to regional offices and park superintendents on the use of alternatives to fee and that more consistent political backup for use of these methods be provided.

9. Past and current NPS use of alternative methods should be evaluated and that the same evaluation format be used henceforth to record all use of alternative methods, with their costs and benefits relative to full fee acquisition.

10. The questions and analyses tested through the eight studies should be refined, simplified and incorporated into revisions of NPS land acquisition plans and interdisciplinary teams (consisting of a park manager, planner, land acquisition and "alternatives" specialists) should be assigned to carry out these reviews.

11. NPS should develop a list of parks with outstanding land protection problems and subject these parks to such a review as soon as possible.

Policy Implications and the Future of the Parks

Were the foregoing team-member recommendations at least partially put into place — especially those relating to "institutionalizing" the study process (see 7-11) — the implications of these eight resource protection studies for the long range future of the national parks would be great indeed.

This is because, for the first time, both the necessity and the practicality of using a range of approaches to carry out the NPS mission could, potentially at least, engage the interest not only of Washington policy people, but of those who are actually charged with the day-to-day responsibility of "running" the parks. The National Park Service is a classic decentralized government activity, where the real responsibility and power is at the operating level. Like a diverse corporation, whose operating divisions supply the profits, top management may wish to try this new approach or that, but if the operating people believe that a new approach might hurt their bottom line, they will have nothing to do with it. This is why the NPS may seem a bit conservative to the idea-man in Washington. It is also why NPS is among the handful of federal-level services that the American people are proud of, revere, and find truly valuable.

So, it would be a meaningful event in the history of the parks to get the field managers themselves on board in an effort dramatically to expand the range of approaches for establishing, operating, and protecting the parks — an effort which subtly changes the role of the manager as guardian and interpreter, by adding to it the role of entrepreneur. Were such a change to come about, it would mean that three things could happen. First, the NPS could solve its immediate, and dire, problem of what to do about the "incomplete" parks. Second, in the longer term the NPS could greatly improve and protect its present overall estate. Third, the NPS could even look toward some expansion of the system, despite a period of fiscal restraint and high land prices that may last indefinitely.

To take up these possibilities in turn, the most urgent of NPS problems centers on what to do about the "incomplete" parks. The number of these parks is estimated at over 100, when all parks are counted, which require some kind of additional land protection to "complete" them. But this large number includes parks where only a few inholdings remain to be acquired, or a boundary change has taken place. The number of parks with a quite serious protection problem — such as Channel Islands — is probably a good deal less. Depending on one's definition, the actual number might be put at 75 parks. It is here that the lessons from the resource protection studies can be applied to significant effect. As it now stands, some have so despaired that the seriously under-acquired parks could ever be completed, that the concept of de-authorization has surfaced as a serious alternative. Possibly, however, the application of the range of approaches uncovered in the resource studies could obviate the need for wholesale de-authorization, although a certain amount of "devolution" — letting some parks, or parts of parks, devolve to other government entities — might well be contempleted.

The point is, without applying the lessons of the resource studies, de-authorization or devolution notwithstanding, the incomplete-parks problem is probably not soluable in the foreseeable future and can be a debilitating political and operational burden for the Park Service. By contrast, as some of the study-teams have recommended (in recommendation number 8, above), the problem can be dealt with given training and policy support from headquarters. Indeed, one park executive has observed that if the Park Service could get the key 75 superintendents plus about 15 experts in the use of alternative approaches together for a total immersion session lasting for two or three weeks, "you've virtually solved the problem of dealing with the incomplete parks and have better understood the 'power base' which has often kept alternative approaches from being taken up by park managers."

Another aspect of the use of alternative approaches to complete the parks is that many of the regulatory techniques can be implemented in order to "buy time" — to provide some protection for an interim period while the park acquisition program incrementally catches up. Such a temporary holding pattern for certain land in a project area gives park managers the ability to focus available funds on the highest priority tracts.

A second potential benefit in applying the lessons of the study parks concerns improving the management of the park system as a whole. If land prices are high and money scarce — the present and future reality now facing the Park Service — then the NPS is obliged to husband its resources skillfully. This new husbandry is especially needed in managing the peripheries of the parks, since increasing rural population growth and economic activity, by crowding in on park borders can vitiate the park's most significant natural and aesthetic values. The lessons from the case studies are helpful in dealing with the problem, not by the traditional means of boundary expansion — i.e. buying more land to push intrusive uses further away from the park's center — but by entering into various partnership arrangements with the governments, quasi-public organizations, and landowners controlling the peripheral lands. At this point, since purchasing land for buffering, is a good deal less likely than in times past, the park manager will have to enter into a kind of political activity, working with other entities to moderate the impact of intrusive neighboring uses.

This approach to handling periphery problems can have two benefits, as the case studies strongly imply. First, obviously, is that existing parks can be protected more fully from adverse peripheral land uses. The second is that land acquisition funds can be used elsewhere, to purchase acreage that is absolutely crucial to the success of a park unit, rather than land whose purpose is to protect other land. Moreover, even if funding were not so scarce, in many places acquisition is simply not the most appropriate solution to potential land use conflicts.

The final implication of the case studies has to do with the expansion of the park system. The potential for the use of alternative approaches for park protection does not only pertain to existing parks — complete or otherwise — but to the parks of the future. While many analysts assert these days that the time of rapid expansion of the system is over, few believe that there will be no new parks, or that the current very low rate of expansion will not increase at some time in the future when the financial picture is somewhat brighter.

When some expansion is again possible, the lessons from the study parks can be applied with significant effect. The reason for this is that the alternative approaches, in the main, apply especially well to parks whose values are primarily cutlural, as opposed to natural or recreational. Flat-out ownership and careful management are required to protect fragile natural areas and the classic scenic wonders that characterize the "crown jewels" of the park system, and is also required of places used for intensive recreation, such as seashores, mountain lakes, riversides, and the like. But park proposals these days are not always concerned with such places, or even predominantly so. In fact, the preponderance of proposals are for large cultural landscapes rather than purely natural or recreational areas. Within such landscapes, there are economic uses that may remain, and in fact are part of the landscape-value of the place: farms, woodlots, private estates, historic settlements. And while some property must be owned and managed for park-specific purposes in any area which is to be part of the National Park System, the basic modes of landscape protection and management must be drawn from those uncovered or created in the course of the resource studies.

These then are the implications of the eight case studies that may be commended to the attention of policymakers concerned with the future of the national parks. To recapitulate, what the studies suggest is a way out of the current dilemma of low budgets and high land prices which can be significantly helpful in solving the problem of the "incomplete" parks, can enhance the management of the present park estate taken as a whole, and can suggest a mode for creating new parks in the future without impoverishing other parts of the system.

These cheerful opportunities for the future depend entirely, however, on the actions taken in the present as a result of the case studies — if, that is, the central recommendations of the study-team members are seriously taken up, especially the recommendations "7-11" (as listed in the previous section) to institutionalize the study process.

To paraphrase these "7-11" recommendations, they are, immediately, to establish an analytical method based on the work in the eight parks, and assign an interdisciplinary team (the park manager, a planner, and specialists in "alternatives") to carry out reviews of the parks, beginning with those parks with outstanding land protection problems; and second, to establish permanent positions for experts on alternatives to work at the regional office and park unit level, to create in-house and public information training materials on alternatives, and for the Washington office of the National Park Service and the Department of Interior to support, technically, legally, and "politically" the entire enterprise of developing and applying alternative approaches.

In the past several years, a number of efforts have been made to introduce top-down changes into National Park System policy to promote alternative protection approaches. These have been proposed by Congress, by environmental policy organizations, by park user groups, and successive administrations. Perhaps the most rewarding and immediate potential effect of the case study project is to obviate the need for such top-down policy making. The case studies have revealed a means of finding new ways to deal with low budgets and high land costs that can be developed organically, directly out of the experience and commitment of the park managers themselves and their associates. This is the way policy ought to be created, and perhaps now, for the National Park Service, it can be. No federal agency, with the possible exception of the IRS has more kibbitzers, back-seat drivers, and proferrers of advice on changing policies, than the National Park Service. In recent years, the service has, at times, lost control of its own future for this reason. It may be, and it is devoutly to be hoped that it will be, that the impulse behind the case studies was wiser than even its originators knew, for if this impulse can now be carried forward with the same vigor as the studies themselves, the future of the National Park System is very much less in doubt.

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Taxes

FROM: Pete Raynor

Tax changes have a major impact on land use development issues. Once alternative land use opportunities are available, the tax implications of each option are a critical factor in any economic decision concerning the future use of such lands. State, local and Federal taxes are all important. Local property taxes are generally paid annually. Federal taxes primarily impact only with a change in ownership -- capital gains tax, inheritance tax and gift tax are important factors in the land use equation.

Recently, Congress reaffirmed its understanding of the importance of the Federal Tax Code in the preservation of important natural areas. Passage of the Tax Treatment Extension Act of 1980, P.L. 96- 541, (hereinafter the "1980 Act") ensured the deductibility of the donation of gifts of partial interests in land for conservation purposes. This result was important. The donation of conservation easements is a significant protection tool that will only be effective if the contribution is tax deductible.

In addition, however, this legislation also set out several important guidelines for the future. In the extensive deliberations concerning the various bills that preceded P.L. 96-541, Congress articulated three important criteria concerning the use of the Tax Code for natural conservation purposes.

(1) Special tax treatment was only provided with regard to carefully defined natural resource areas. Each gift must be of a partial interest in land within one of a series of defined types of areas before a donation will be deductible. This is critical. At this point in time there are numerous Federal, State, local and private conservation program areas that are in need of protection. These areas must be provided an economic incentive to survive. To the degree the Tax Code can be a vital part of this effort, it must be structured to protect those areas truly worthy of protection.

Use of the Tax Code to provide tax breaks for the donation of interests in land not worthy of protection is counter productive. The deduction represents a loss of revenues to the United States and the abuse of the conservation ethic undermines the use of the system in the future. Section 170(h)(4)(A) now provides a carefully formulated definition of "conservation purpose" to establish, or identify, those areas worthy of protection. Recreation, natural habitat, and open space areas are included. A reference to areas identified as being consistent with "Federal, State, or local governmental conservation policy" is also included within the open space provision. This is an extremely important aspect of this Legislation. The Tax Code must be used to protect areas worthy of protection -- not to provide a tax benefit for the transfer of partial interests in land of little or no redeeming conservation value.

(2) Congress established that the gift of a partial interest in land must be for a conservation purpose. Not only must the area in question be of value for conservation, but the interest provided must meet that objective; the donation itself must be "exclusively for conservation purposes". Section 170(h)(5) now provides that a contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity. It is not enough that the gift be of an interest in land of natural importance, it is also necessary that the gift itself serve to protect the area; the conservation purpose must be met.

(3) Congress established that the recipient of the gift -- which may be either a governmental unit or a publicly supported charity -- must also be qualified to manage the resource. The contributions are to be made to organizations which have the commitment and the resources to enforce the perpetual restrictions and to protect the conservation purpose.

These basic principles are fundamental to the use of the Tax Code in the future. If these three identification and protection concepts are held true, the Congress should permit careful use of the Code to protect important natural areas. Failure to maintain these three standards, however, will inevitably lead to abuse and the loss of a tremendous opportunity to allow the market place to work for conservation purposes. Once again, tax incentives should only be provided with regard to areas of true conservation value; the tax incentive must serve to protect a conservation purpose in perpetuity; and, the recipient of the land in question must be qualified to manage the resource consistent with the conservation purpose of the donation.

With the Tax Treatment Extension Act of 1980, Congress extended the deductibility of contributions of partial interests in land for conservation purposes. This is a fundamental tax incentive for the protection of areas of natural importance. Within the three principles outlined above, however, other changes are also necessary to make tax policy an effective tool for the conservation of these key areas. First, the mechanics of the Act need to be improved. As drafted, the Legislation is not going to accomplish what Congress intended. Second, tax incentives also need to be applied to the sale of key conservation area lands. There needs to be an incentive to sell for a conservation purpose as well an incentive to donate. Third, the incentives for the donation of a conservation contribution need to be strengthened and made more equitable. This deduction could be made more effective in providing an incentive for the preservation of important natural resource areas for conservation purposes. Finally, there are also a variety of other Federal tax changes -- such as the elimination of deductions for casualty loses -- that are important to the preservation of these areas of natural importance and that should also be evaluated.

Identification of governmental conservation programs

The first problem lies within the structure of the Tax Treatment Extension Act itself. The 1980 Act provides that existing governmental conservation policies are an important criteria in establishing the deductibility of a contribution of a partial interest in land for conservation purposes. The Act fails, however, to establish an effective means to implement that criteria; it does not indicate how areas that are within the scope of those conservation policies will be identified.

The most basic rule is that gifts of partial interests in real property are not deductible for tax purposes. That rule is provided by section 170(f)(3)(A). Subparagraph (B) of section 170(f)(3) provides several exceptions. As restructured by the 1980 Act, one exception is established for "qualified conservation contributions". The concept of a qualified conservation contribution is further defined in the Act to be a contribution:

> (A) of a qualified real property interest,
> (B) to a qualified organization,
> (C) exclusively for conservation purposes.
>
> 26 U.S.C. § 170(h)(1)

Within that definition, the term "exclusively for conservation purposes" is a critical aspect of the legislation. This term is further clarified in two subsections. Subsection 170(h)(5) ensures that the conservation purpose of the gift is met: that the conservation contribution is adequate to protect the conservation purpose in question; that the recipient is qualified to manage the interest donated; and, that the donation is in perpetuity. 26 U.S.C. § 170(h)(5). Subsection

170(h)(4) identifies those types of areas that are worthy of natural resource protection. 26 U.S.C. § 170(h)(4). Three natural resource categories -- recreation, natural habitat, and open space -- are established. Within these categories, as a part of the open space provision, the 1980 Act provides that a conservation purpose can be a contribution that is:

> pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit . . .
>
> 26 U.S.C. § 170(h)(4)(A)(iii)(II).

This provision establishes a significant responsibility to identify already existing governmental conservation policies for the protection of important natural areas. The identification effort is critical to the success of the 1980 Act. To be implemented successfully, however, this provision will apparently require further legislation.

Successful implementation of this aspect of the Tax Treatment Extension Act requires a process to identify areas of natural importance subject to governmental conservation policy. This process was not established in the Legislation and it has not been established by the Department of Treasury. In excess of one year has now elapsed since passage of the 1980 Act. Treasury has not, as yet, published proposed regulations. In addition, preliminary indications are that Treasury is apparently going to be unwilling to rely on identification by other agencies, even other Federal agencies such as the Department of the Interior or the Department of Agriculture, to assist in this identification effort. This is an unworkable situation.

Treasury does not have the expertise to identify areas that should be provided tax incentives for protection pursuant to clearly delineated governmental conservation policy. In addition, Treasury will also have difficulty determining what specific conservation interests are adequate to protect a given area of natural importance. Extensive comments have been provided to Treasury on both issues by the Department of the Interior pursuant to letters of August 14, 1981, and January 5, 1982, from the Assistant Secretary for Fish and Wildlife and Parks. These comments, as well as similar concerns expressed by many others, including Senator Wallop in a letter of November 19, 1981, do not appear to have had any impact with regard to the need for prompt publication of proposed regulations.

The solution is straightforward. The Tax Treatment Extension Act should be amended to place identification responsibilities with the Federal, State and local agencies responsible for implementing the conservation policies in question. At the Federal level this would primarily be the Department of the Interior and the Department of Agriculture. These two Federal agencies might also be utilized to certify parallel State and local conservation programs, if necessary. These agencies should also ensure that tax incentives are only available when adequate conservation interests are transferred to provide permanent resource protection, as presently required by the Tax Treatment Extension Act.

Incentives for Sales and Exchanges for a Conservation Purpose

The second major change is the need for tax incentives with regard to the sale or exchange of lands within areas that are identified as worthy of protection pursuant to the Tax Treatment Extension Act. There is a need for incentives to sell for a conservation purpose as well as incentives to donate. Under the existing provisions of the Internal Revenue Code of 1954, there is no incentive to encourage a sale "exclusively for conservation purposes". There is a need to recognize that a voluntary sale for such an established conservation purpose is again in the public interest and that such voluntary sales should also be encouraged.

There are several key issues. First, incentives for sales should only be applied consistent with the three identification and protection principles established by Congress with the passage of the Tax Treatment Extension Act; second, appropriate tax incentives need to be identified; finally, the relationship between incentives to sell and incentives to donate has to be established.

(1) The identification and protection issue is fairly simple. The existing structure of the Tax Treatment Act could be utilized for this purpose. The three basic principles established by the Congress with the 1980 Act should be directly applicable. To benefit, a sale would have to meet the same basic standards applicable to contributions. As with contributions, the land being sold would have to be for an identified conservation purpose; the conservation purpose would have to be protected in perpetuity; and, the recipient would have to be qualified to manage the resource. Only voluntary transactions should be eligible, not condemnations.

(2) The second issue is to select effective tax incentives to encourage sales or exchanges for a conservation purpose. Amendment of the Tax Treatment Extension Act -- or reliance on

other legislation that would utilize the basic structure of that Act -- to encourage the sale of properties for identified conservation purposes would also require the establishment of incentives that would be appropriate to encourage these types of transactions.

There are at least two possible tax incentives that would appear to be appropriate. The first would be to permit the reinvestment of the proceeds from sales for identified conservation purposes without tax recognition. In this manner, capital gains tax would be deferred until sale of the new property.

This approach could be similar to the right to reinvest under a threat of condemnation consistent with section 1033 of the Internal Revenue Code of 1954. Proceeds from the sale to any qualified organization for the required conservation purpose could simply be provided the same reinvestment opportunities available if the land were purchased by a governmental entity under threat of condemnation. No gain would be recognized so long as the proceeds were converted into property that is similar or related in service or use to the property that was sold.

A slight variation would permit reinvestment of proceeds from a qualified sale regardless of purpose. See, S. 1713 (rollover of gain from the sale of farmland development rights to a State or a political subdivision thereof under a farmland preservation program). In both situations, however, taxation of the gain from the sale would be deferred, not eliminated.

The second tax incentive approach would be to exclude capital gains from the computation of gross income without regard to reinvestment. Interest that may be received by the seller as a part of the transaction could also be covered. An example would be the exclusion provided for the sale of a residence to an owner over age 55. 26 U.S.C. § 121. See, H.R. 4680 (exclusion of gain to persons that sell wetlands or wetlands easements for fish and wildlife conservation); see also, 26 U.S.C. § 126 and 1255 (gross income exclusion under nine conservation cost-sharing programs administered by DOA). In this case, taxation of the gain would be eliminated, not merely deferred.

H.R. 4680 illustrates the second approach. In that Bill, Congressman Lagomarsino has proposed to provide tax relief with regard to the sale of specifically defined wetlands areas to eligible conservation authorities for conservation purposes.

Under this provision the gain from a sale would not be recognized for tax purposes and no capital gains tax would be paid. As with the nonrecognition of gain from the sale of a residence by a taxpayer over age 55, this provision would clearly be an effective tax incentive for the sale of lands to a qualified organization for a conservation purpose.

(3) The third issue with regard to incentives for sales is the relationship between tax incentives for donations and tax incentives for sales. There are two primary concerns. The first is the geographic scope of the two incentives-- the areas that would be covered by each set of provisions. That is, should both incentives be applicable to all of the same natural resource areas. The second concern is the relationship between the incentives themselves where both are applicable to the same area -- whether the incentive for sales, for example, would eliminate the incentive for donations.

As with donations, the basic goal of tax incentives for sales for a conservation purpose would be to encourage State, local and private action to protect conservation areas of established natural importance. Grass-roots initiative would replace Federal action for the protection of these key areas. The threshold question concerns the scope of the "sales" program -- how many areas should be provided this additional protection incentive.

As indicated above, the 1980 Act relates to three categories of natural area -- recreation, natural habitat and open space. That would be one alternative. Incentives for sales could run to all areas that are identified under the Tax Treatment Extension Act. A second alternative would be to limit the incentives for sales to areas that are identified in accord with Federal, State and local governmental conservation policies within the open space category of that Act. A third alternative would be to tie this incentive to Federal governmental conservation policy alone -- only areas identified as appropriate for conservation protection pursuant to existing Federal laws would be covered. A final alternative would be to key these incentives for sales to only the most critical Federal areas of national importance.

Use of the same categories applicable to the entire Tax Treatment Extension Act -- the first alternative -- would appear to be the most appropriate. Because the same conservation protections would be applicable, there seems little reason to change the scope of the "sales" program from those natural conservation purposes already identified by Congress.

within the areas identified as appropriate for both incentives, the relationship between tax incentives for donations and tax incentives for sales becomes the critical issue. A balance between the two is necessary; the donation incentive would clearly be reduced in situations where both an incentive to donate and an incentive to sell are applicable. Accordingly, two distinctions should be established.

First, the incentive to sell should only be applicable to voluntary sales of all of an owner's interest in the land in question -- essentially, the voluntary sale of an owner's title. It should not be applicable to the sale of partial interests in land that are covered, for donation purposes, by the Tax Treatment Extension Act. The 1980 Act provides a special incentive for qualified conservation contributions that is not generally available for other partial interests. This incentive should not be disrupted.

Such a distinction would be generally consistent with the actual situation in the conservation community at the present time. Conservation easements or partial interests are typically donated, while fee simple or an owner's entire interest is generally purchased. Accordingly, the distinction would serve to encourage continuation of that workable pattern. There is one clear exception to this general rule, however. There are numerous established fish or wildlife conservation programs -- particularly the wetlands programs -- that have historically relied on the acquisition of easements. Many of these programs have been in existence a long time and have a well established track record. These programs should be maintained. Accordingly, the general prohibition against nonrecognition of gain from the sale of less than the owner's entire interest should not be applicable to the established fish or wildlife conservation programs.

The second distinction between incentives to sell, or exchange,, and the incentive to donate is that the incentive to sell should be provided for a limited period of time. Some period of time -- say, 10 years -- should be provided as a sunset provision to encourage the present protection of key areas of natural importance. Many key natural areas are in need of immediate protection. The incentive to sell for a conservation purpose should be responsive to that situation. A termination date would serve that purpose.

One exception to the sunset provision would also encourage prompt action. Owners that have previously donated a qualified conservation contribution should be permitted to sell their remaining interest without recognition of gain, either before or after the general sunset provision. This exception would encourage at least one version of the bargain-sale situation. That is a situation where an owner would make a present donation of a qualified conservation contribution and, thereafter, sell his entire remaining interest for conservation purposes. The fact that this subsequent sale could occur after the general termination date should encourage the initial donation.

With these two distinctions, incentivies to donate and incentives to sell would work well together. The owner that desires to continue to live on his land but to protect its conservation purpose would be provided a continuing incentive to donate a conservation interest. Ranchers and farmers of key natural areas would be obvious examples. Such a donation would typically permit the owner to continue a traditional land use. He would not, however, receive any incentive to sell that partial interest and to remain on the land. The incentive to sell for a conservation purpose would not be applicable to that situation other than with regard to established fish or wildlife conservation programs.

On the other hand, the owner that wishes to sell-out and leave an identified area of established natural importance would be provided a very strong incentive to sell for a conservation purpose within a limited period of time. The incentive to sell would have a sunset provision. The only exception would be for those owners that have previously donated a conservation interest -- they should be rewarded for their decision to donate and should be permitted to sell their remaining interest, either simultaneously or thereafter, without recognition of gain.

In sum, then, the second major change in tax policy -- tax incentives with regard to sales for a conservation purpose -- raises a need for three things: (1) safeguards that the natural areas in question are important and will be protected, as required by the Tax Treatment Extension Act with regard to donations; (2) identification of appropriate tax incentives, as essentially provided by H.R. 4680; and, (3) a balance between incentives for sales and incentives for donations. These points are readily applicable to H.R. 4680 and it should be amended as follows:

- H.R. 4680 should be applicable to a limited number of areas. Incentives for sales should be provided for all of the areas that receive incentives for donations under the provisions of the 1980 Act. These areas could then be identified based upon, or in a manner consistent with, the Tax Treatment Extension Act of 1980.

- H.R. 4680 should be limited to voluntary sales of an owner's entire interest and specifically not be applicable to sales of partial interests in land. The only exception would be for established fish or wildlife conservation programs.

- H.R. 4680 should be provided a 10-year sunset provision with an exception applicable to the sale of a remaining interest after a qualified conservation contribution prior to the sunset period.

- And, H.R. 4680 should be amended to ensure that incentives for sales are only provided in situations where the identified conservation purpose will be provided permanent protection as a result of the sale, as presently required by the Tax Treatment Extension Act of 1980 with regard to donations.

Improved Incentives for Donations

The third major change to tax policy to encourage the protection of conservation areas of natural importance is to increase tax incentives for qualified conservation contributions. In addition to improving the mechanics of the Tax Treatment Extension Act and providing tax incentives for the sale of lands within areas of natural importance for a conservation purpose, there is also a need to increase the incentives for donations. Three changes are called for: first, to create a tax credit; second, to clarify the relationship of such an incentive to gifts that include the reservation of life estate; and, third, to provide the opportunity for estates to make qualified conservation contributions as an offset against Federal inheritance taxes.

(1) Tax credits for donations. As presently structured, the gift tax deduction only provides an economic incentive to encourage the contribution of a preservation interest in land to a small segment of the owners of such land. Under the existing system, a gift tax deduction is of value only if the donor has a substantial income. Absent that income, the deduction is of little or no value to the taxpayer. This means that many owners of lands of important conservation value have no economic incentive to protect those lands. In contrast, there is a substantial incentive not to encumber lands with the donation of a conservation interest because it will restrict development in the future. Many existing ranchers and farmers are in this situation. These activities typically do not

produce a significant income in relationship to the value of the land in production. Accordingly, the gift of a conservation interest to protect the area is not encouraged despite the fact that the area may be of natural importance and that the owner may wish to continue a traditional and protective use of the land.

This could easily be changed. In those situations where the preservation of such land is of natural importance, the Tax Code should be adjusted to provide an equal incentive to all landowners -- those with a substantial income and those without -- to donate a preservation interest in their land. While there are a variety of ways this might be accomplished, the simplest would be to permit the value of such a donation to represent a tax credit that would be available to the donor until exhausted. In this manner, a rancher or a farmer operating within an area of natural importance would be encouraged to protect his land through the donation of a preservation interest. Traditional use of the land would be maintained, consistent with the conservation of the area, and future protection of the resource would also be established.

"(2) Donations subject to the reservation of a life estate should be permitted. A second improvement would be to clarify that a donation of the entire interest of the donor other than a life estate or term for years can be a qualified conservation contribution. Incentives for the donation of qualified conservation contributions need to be clearly applicable to situations where the donation is subject to the reservation of a life estate. In addition, the valuation of such a gift, and the gift of a remainder interest, need to be considered.

The Tax Treatment Extension Act should apply if the contribution consists of the entire interest of the donor other than a compatible right of present use and occupancy for a term of years or for a life. The idea of permitting a charitable deducation for the value of a conservation donation of a remainder interest or perpetual restriction on use within an area of natural importance would also apply equally well to these contributions.

As indicated previously, subsection 170(f)(3)(A) of the Tax Code precludes a contribution of less than a taxpayer's entire interest unless specifically permitted. As rewritten by the Tax Treatment Extension Act, subsection 170(f)(3)(B) establishes those exceptions -- one of which is a qualified conservation contribution.

The present difficulty is that the 1980 Act is not specific on the deductibility of a qualified conservation contribution that is subject to a present right of use and occupancy or a life estate. The Act specifically permits the contribution of a remainder interest; it specifically permits the contribution of the entire interest of the donor other than a qualified mineral interest; it also permits the donation of a perpetual restrict (an easement); but, the Act does not specifically permit the donation of the entire interest of the donor other than a limited right of use and occupancy or a life estate. Accordingly, there is a concern that such a donation will not be allowed. While such a conclusion might be technically sound, it is not consistent with the purpose of the Tax Treatment Extension Act -- that is, to encourage the protection of conservation areas of natural importance through private initiative.

To be a qualified conservation contribution, the conservation purpose of every gift must be protected. Accordingly, a contribution of a remainder interest can only be valid to the degree the donor's present rights are also restricted to prevent harm to the conservation purpose in the interim. This protection may require conveyance of present conservation restrictions. This could be accomplished by the contribution of a present perpetual restriction (an easement) and the contribution of a remainder interest. But, the same purpose could also be accomplished by the donation of a donor's entire interest subject to the reservation of a compatible life estate or term of years. Either transaction would be effective and either should be permitted.

A landowner may wish to donate both an easement during his life and a remainder for the period after his death. In that event, both the value of the present conservation interest and the value of the remainder interest should be available as a deduction. Alternatively, he may wish to donate his entire interest subject to the reservation of a life estate consistent with the overall protection of the area. This contribution should also be allowable. In this manner a maximum incentive would be provided to encourage donations of interests in lands to provide conservation protection for areas of established natural importance. To the degree that a transaction based upon the reservation of a life estate or a term of years cannot be a qualified conservation contribution consistent with the existing provisions of the Tax Treatment Extension Act, the Legislation should be clarified.

A second element of this situation concerns valuation. The valuation of gifts of qualified conservation contributions that are of a remainder interest or that are subject to the reservation of a life estate need to be carefully considered. In both cases, the donor retains a certain element of control of the area in question during his life pursuant to the terms of his gift. As indicated above, however, these gifts can only be qualified conservation contributions if the conservation purpose of the gift is protected during that interim period. The donor cannot continue to hold a sufficient right to harm the natural resource values which are to be protected by the contribution. In either case, the conservation purpose must be protected during the interim period -- either pursuant to restrictions on the nature of the reserved estate or, if the gift is of a remainder interest, pursuant to some form of a limitation on the owner's present rights during the interim period. Valuation of these types of contributions should reflect that reality.

Under the existing provisions of the 1980 Act, and section 170(f)(4) of the Internal Revenue Code of 1954, a donor who wishes to donate a remainder interest suffers a significant penalty in the discounting of the value of the qualified conservation contribution. The value of the remainder contribution will be reduced despite the fact that the donor is required to continue to protect the conservation value of the area, and may not deplete or waste it. The retention of a stewardship interest is discouraged, when it should be encouraged.

A clarification is necessary. While discounting may be necessary, restrictions on present rights should also be considered. The present value of a qualified conservation contribution of a remainder interest should be discounted. In addition, however, the Tax Treatment Extension Act should also reflect that the donor's present rights must also be restricted, either by a gift of a conservation interest or in some other manner, and that these restrictions must be considered in the valuation of the qualified conservation contributions.

The donation of the entire interest of the donor other than a life estate is in need of similar consideration. Here again, the donation can only be allowable to the degree that the ultimate conservation purpose remains protected during the life estate period. Accordingly, discounting of the total value of the gift because of the retention of the life estate must be consistent with the realities of the situation. The nature of the requirements for a qualified conservation contribution ensure that present protection is also received with such a gift. Valuation of the contribution must include that factor.

One final factor with regard to the valuation of qualified conservation contributions should also be considered. The Tax Treatment Extension Act articulates a Federal policy to encourage the protection of the conservation value of specific areas of natural importance. It is important that this policy not be frustrated by generally unrealistic valuation standards or by contrary State or local law or policy. Federal valuation of gifts of conservation interests in land must recognize the often substantial economic opportunities that are being foregone with continuation of a traditional use. It is unrealistic to conclude that because a traditional land use will continue as it had before the gift of a conservation interest, no value has been lost. Valuation of such gifts must rest on the economics of the market place, and not with the subjective fact that the present owners may also want to continue a traditional use. The gift should be valued from the perspective of the economic oportunity foregone as reflected in the decrease in the fair market value of the property. A fair and realistic valuation is important. The Federal interest is protected by the fact that the area in question -- and the interest protected -- is one of established natural importance.

Similarly, this Federal objective should not be frustrated by State provisions that fail to recognize the donation of a conservation interest as a transferable interest in land, or that refuse to calculate the change in fair market value when assessing state or local property taxes. The Federal objective to encourage private initiative in the protection of established areas of natural importance through the transfer of conservation interests should govern these situations.

(3) Donations should be an offset against Federal estate taxes. The third improvement to increase incentives for donations would be to provide the opportunity for estates to make qualified conservation contributions as an offset against Federal inheritance taxes. The relationship of qualified conservation contributions to Federal inheritance taxes is also in need of a change. The death of the owner of a substantial landholding often creates a situation where the land must be sold or developed by the estate to pay the inheritance tax on the value of the land. The existence of the tax itself becomes a significant factor contributing to the change in the traditional use of land. Once again, this is particularly true of farmers and ranchers because of their lack of income in relation to the value of their land base. If those lands are

within an area of natural importance, and if this traditional use serves to protect the area in question, this negative incentive should be changed.

The Federal income tax system should provide a positive incentive to encourage the conservation protection of important natural areas upon the death of the owner. Again, there are a variety of ways this could be accomplished. The simplest, however, would be to specifically permit the value of a donation of a conservation interest by the estate -- one consistent with the provisions of Tax Treatment Extension Act -- to serve as an offset against Federal inheritance tax. If the value of the donated interest was not as great as the inheritance tax, the remainder of the tax would have to be paid; if the value exceeded the inheritance tax, the gift tax credit suggested above could be carried forward to the heirs as a credit against their own income tax situation. In this manner, Federal inheritance tax provisions would be linked with the deductibility of qualified conservation contributions to create a third positive incentive for donations to encourage the permanent protection of those lands within areas of established natural importance. Such an approach would provide the private sector with a significant incentive to preserve traditional and protective land uses within those areas determined to be of natural importance not only during the life of the owner, but also as a part of estate planning for the future.

Other Federal Tax Impacts

The tax incentives discussed above all focus on transactions that involve a change of ownership of real property. Establishing prompt identification of governmental conservation programs under the existing provisions of the Tax Treatment Extension Act; providing tax incentives with regard to sales for a conservation purpose; and, providing improved incentives for the donation of qualified conservation contributions -- each would provide a key Federal tax incentive to the private sector with regard to situations involving transfer of title. In addition, each of these incentives could be structured within the basic conservation guidelines unofficially established by the Congress with the passage of the 1980 Act. They would be limited to carefully defined natural resource areas; each would require a permanent commitment and in perpetuity protection; and, in each case, the recipient would have to be qualified to manage the resource. These are not the only tax situations that effect conservation, however.

There are a variety of tax consequences -- not related to changes in land ownership -- which could be significant for the preservation of areas of natural importance. These Federal tax impacts would include the availability of casualty loses and the computation of depreciation schedules. It is obvious that the Federal tax system can serve to either encourage or discourage the conservation of lands within areas of established natural importance depending upon the availability of casualty loses and the deductibility of depreciation expenses with regard to structures and facilities that may be constructed there.

Incentives to encourage donations or sales to conservation organizations for a conservation purpose should be effective with regard to those owners seeking an alternative to development. Other owners will want to develop, however. It is only realistic to recognize that a certain amount of development within areas of established natural importance is inevitable and that some of this development should be encouraged and that other development will be incompatible and should be discouraged.

Tax amendments with regard to properties listed on the National Register of Historic Places have led the way in this area.

Protection of areas of natural importance would clearly be more effective if casualty loss deductions and depreciation schedules were directed at that goal. Adverse development of lands within an area of natural importance need not be provided accelerated depreciation. Alternatively, accelerated depreciation could be made more readily available for development decisions that are compatible with the protection of an area of natural importance. Finally, casualty loss deductions need not be permitted for construction incompatible with the natural dynamics of an established area of natural importance. For example, construction within an area that is subject to brush-fires, floods, or mud slides should not be provided the incentive for development created by the availability of a casualty loss in the event of its destruction.

These are general concepts. They are not intended to be structured toward preservation of significant conservation interests within any particular area of established natural importance. There are two important thoughts, however. First, as with tax incentives for donations and sales, these types of economic incentives and disincentives can be structured to effect private decisionmaking. That point has been established by the historic preservation amendments. Second, the Federal Tax Code provides a sufficiently broad base that these incentives can be adopted, if in the national interest, without adverse impact elsewhere in the immediate area. This is the principle problem with a transfer of development credits approach.

The transfer of development credits concept typically rests on the premise that if a developer forebears from adverse development in a particularly critical area, expanded development will be permitted somewhere else. The problem lies in identifying that other location. This is particularly difficult within an area established to be of natural importance. To the degree that an entire area is of important conservation value, it is difficult to foresee how any one area within it is going to be able to carry the additional development necessary to protect the most critical areas. Accordingly, there is a need to spread the development incentives over a broader base than just the area identified for protection.

The transfer of development rights concept does not provide an easy solution to that problem. Typically, the area to be protected and the area receiving the transfer must be located within the jurisdiction of the local political subdivision enacting the ordinance. This provides a limited area within which to make the redistribution. The Federal Tax Code provides a much broader base for redistribution and is ideally suited for that purpose. The redistribution itself should occur not through prohibitions, however, but rather by introducing tax incentives and disincentives into the market. Private initiative would do the rest.

Finally, there is one additional set of tax incentives that is unrelated to either changes in ownership or development of facilities within areas of natural importance. These tax incentives would not have a specific impact on most taxpayers -- as do the tax consequences of donations, sales, inheritance, depreciation or casualty loss. An example would be the possible application of the Industrial Revenue Bond concept (IRB's) to established areas of natural importance.

A detailed IRB type program -- such as that targeted for low income housing areas under the Mortgage Subsidy Bond Tax Act of 1980 -- would be one clear way to encourage funding at the local level for the overall protection of an established area of natural importance. This approach would also be consistent with the strong support invoked for IRB's in the fall of 1981 by Congress. In November of 1981, language was passed as a part of a continuing appropriation bill that would have restricted the availability of these funds to large corporations. Although the continuing appropriation bill was vetoed, the Congressional fight demonstrated strong support for the use of the IRB concept at the grass-roots level. Specific application of this approach to assist local land trust efforts within established areas of natural importance would seem to fall within that support expressed by Congress.